LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
NOV 18 1970
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

October Term, 1970

NO. 982

HOUSTON INDEPENDENT SCHOOL DISTRICT,
ET AL, *Petitioners,*

v.

UNITED STATES OF AMERICA
Intervenor-Respondent

v.

DELORES ROSS, ET AL,
Plaintiffs-Respondents

APPENDIX OF OPINIONS BELOW

W. JAMES KRONZER
500 Houston First Savings Bldg.
711 Fannin Street
Houston, Texas 77002
Special Counsel for Petitioners in Desegregation Matters

Alpha Law Brief Co., M & M Bldg., Houston, Texas 77002

INDEX

	Page
Appendix A—Bench Remarks of July 23, 1970	1
Appendix B—Memorandum and Order of District Court of May 30, 1970	15
Appendix C—Order of Court of Appeals of August 25, 1970	66

APPENDIX A

IN THE

United States District Court

FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 10444

DELORES ROSS, a minor, by her Next Friend, Mary Alice Benjamin, et al, *Plaintiffs,*

UNITED STATES OF AMERICA, *Plaintiff-Intervenor,*

vs.

ROBERT ECKELS, as President of the Board of Trustees of the Houston Independent School District, et al, *Defendants.*

Copy of Judge Ben C. Connally's Verbal Preliminary Ruling in the July 1969 Desegregation Hearing (July 23, 1969)

THE COURT: Be seated, gentlemen.

In Civil Action 10444, I think the record should reflect that after our session of yesterday wherein the

evidence was concluded and counsel and I discussed the time table under which we would try and operate, it was agreed that you gentlemen would furnish briefs and a summary of your evidence by the end of this week or the first of next.

And after we had adjourned for the day, in examining my calender and reflecting on the fact that I had the next two weeks where I will be involved in the trial of criminal matters, I concluded that it was very doubtful if time would permit any very thorough examination of the great amount of evidence that had been introduced in this matter, and for me to make any definite ruling that the Board of Education could comply with before the beginning of the next school session which is about the first of September.

I asked counsel to come to my chambers and we discussed this fact informally, and after getting the views of counsel, I determined that it was the part of wisdom, by reason of these circumstances, to advise you gentlemen at this time of my tentative views about the issues that have been presented.

It will be understood that what I say is based on the evidence that has been offered here in the courtroom, the summaries of depositions that you had given me, and without an opportunity for me to make any in-depth examination of the various exhibits and depositions and other matter which is offered. And this, to use the vernacular, is sort of off the top of my hat. But I think it is the best way to proceed, by reason of the fact that, without fault of anyone concerned, we simply do not have enough time to do it in any different fashion.

Our case here started back in 1956, as I remember, about two years after Brown against Board of Education. We have had a number of hearings. It has developed from the evidence that Houston School District is the largest in the south, sixth largest in the nation, approximately a quarter-million students and about ten thousand faculty members divided, both student and faculty, almost exactly in a two-thirds one-third ratio, two thirds being white and one-third negro.

After many of our hearings, either one or both parties have been dissatisfied and has taken an appeal. But I believe with one exception the action which we have taken has met the approval of the appellate court.

I might say that I take much pride in the fact that we have accomplished as much as we have in Houston in a completely orderly fashion, and that up until now, with the one exception that I noted, I believe that our actions have been within full compliance with the law.

It has been my purpose, throughout the thirteen years that we have had these difficult and troublesome issues presented, to require full compliance by the Board of Education with its obligation. But it has also been my purpose to permit the Board as much freedom and as much leeway in accomplishing that objective as it was possible.

I am completely mindful of my own lack of expertese in this area. I am not an educator and certainly not a school administrator, and it has been my desire that the Board would utilize its knowledge and training in that field to accomplish these objectives under the rather general guidelines which we have laid down here from time to time.

So much for the background of it.

The law of the case, as I understand it, is essentially this: As you know, of course, our problems started with the first Brown case in '54. That case held, as I interpret it, to mean this, that the segregated school systems which were prevalent throughout the south, and particularly in this district, were subject to Constitutional challenge by one or more negro children who at that time were required, simply because they were negroes, to attend particular schools. The court ruled that a negro child cannot be told that he or she must attend a particular school and no other simply by reason of their race; that this was an unconstitutional discrimination and that it might not be further enforced.

In the fifteen years since that time, we have seen literally hundreds of cases which have made some rather drastic changes in that interpretation of the Brown case.

First, we had a series of cases, as I remember it, wherein the schools were zoned in the residential areas, and we had what the courts referred to as de facto segregation, simply because by reason of residential patterns, it developed a great many of the schools were essentially all white or essentially all negro by reason of the circumstance that many residential areas were primarily white or primarily negro, and that no real desegregation of the school resulted.

Sometime after that we heard much about the freedom of choice plan under which a child was permitted to go to any school within the system simply by showing up at the school house door on the first day of the school year.

That, too, has not resulted in many cases in any meaningful integration. The dispute, I think two schools of thought that developed in the courts, were on the one hand that the Brown case, number one and two, did not require integration of the schools, that is a forced integration, but simply prohibited enforced segregation. This school of thought was to the effect that where a voluntary choice were allowed, that that was entirely Constitutional, irrespective of the fact that de-facto segregation might result.

If this case here today were one of first impression, I might follow that view, because I think there is much to be said for it. I fail to see how a scholastic, either black or white, would have any legitimate Constitutional complaint if he or she could go to any school in the school district.

If the child wanted to go to an all-white school, all he had to do was show up at the school house door. If he wanted to go to a school where the population is about half and half, he likewise could do that. If he thought he got a better education that way, that opportunity was open to him.

On the other hand, if he preferred, for reasons of his own, that he wanted to go to a school populated by students of his own race, he had that right, too.

But, this is not a case of first impression, and that is not the law, as I understand it, today. The more recent Supreme Court cases, and a vast number of cases from this circuit, have announced the principle, as I interpret them, that this question is no longer one of a Constitutional right of one or more indivdual children, but that

integration is an end in itself. It is sort of a matter of public policy which must be achieved irrespective of the wishes of one or more children, and it has reached a point that regardless of those wishes, the law seems to require that integration must be brought about and that the burden is on the school district to devise ways and means of accomplishing that end.

That is the law as I understand it and as I expect to apply it here.

What is our situation here in Houston? We have had freedom of choice for two years, I believe. There has been, in my judgment, some degree of success, although a rather marked and rather limited degree. As we mentioned several times during the course of the evidence, the authorities, so far as I know, do not ever define what an integrated school situation is, nor have the courts ever set out what an acceptable level of integration is, whether twenty percent of the children or forty percent of the children or any other mathematical percentage or degree must attend integrated schools.

I have had the feeling that the definition that the intervenor's expert suggested to us was probably a fairl good rule of thumb, or yardstick. He told us he considered an integrated school in which no less than ten percent of the students were composed of a single race. So that a school ten percent negro and ninety percent white would qualify. One ninety percent negro and ten percent white would qualify. And one with the school population ration being anywhere in between, sixty-forty either way or fifty-fifty would qualify, but one with less than ten percent negroes or one with less than ten percent whites would not.

It occurs to me that that is a very good working definition, because in a school with ten percent of its students being of a minority race, there would be a meaningful integration of the races, and it would not be a mere token integration.

According to the figures furnished us yesterday, that shows that about some sixteen or seventeen or eighteen percent, as I calculate it, of the negro students in the school district are now attending integrated schools. That, in my judgment, is not sufficient to meet the requirements of the appellate courts, and the board is obliged to adopt some plan or some means which will bring about a more complete integration.

We have had three plans proposed to us here. The plaintiffs have proposed a very comprehensive busing program worked out with computerized certainty, and with certain definite limitations or restrictions. As I understand it, it calls for the busing daily of some 44,000 students, approximately 34,000 white and approximately 10,000 negroes. It contemplated that no student would be bused more than ten miles from his home and it likewise was calculated to assure that no single school would be taxed beyond its capacity. It was a very thorough and workmanlike job.

As I indicated to counsel yesterday afternoon, after our conclusion of the trial however, I do not favor busing as such, and I would expect to direct the School Board follow this course only as a last resort and only if all other means have failed.

I say that because there are a number of objections to a busing program of this nature. I feel that it presents

more problems than it solves, both legal, Constitutional and practical problems.

In the first place, the Civil Rights Act, the very statute that gives the government the right to be here at all, provides, as I recall it, that the schools will not be obliged to bus students out of their area to accomplish racial integration.

From a Constitutional standpoint, it occurs to me that it is just as unconstitutional to say to a negro child that you must go to school "A" and you must go there only because you are a negro child, as was the situation with which the Brown decision dealt, which likewise said to the negro child that you must go to a particular school solely because you are a negro.

The practical problems, however, irrespective of the legal aspects of the matter, are very great. In the first place, it is a very expensive operation and I doubt the propriety of this court, and certainly only in a last resort, saying to the School Board that you will spend a very large amount of money hauling these children from one part of town to another.

It is a matter of forced attendance at particular schools, which is never a very attractive alternative to the students and to the families, parents of the students. If integration can be accomplished in any other fashion, as by attending schools nearer one's home where busing will not be required, I think that has many advantages.

Many children can walk to school. They can be driven to school by their parents with the least effort and expense. If a child becomes sick during the day and if the parent must come and pick him up, certainly it is much easier

if the school were a few blocks away than if it is a matter of several miles.

Hence, I do not favor the busing proposal.

The government has presented a plan, very complete and comprehensive plan of zoning and pairing. It likewise is designed to meet but not to exceed the capacities of the various schools in the district. It would bring about a much greater degree, or incidence, of integration than presently exists.

The government witness who offered the plan and who devised it, I thought was very candid in his comments to the court, that he did not claim that it was perfect, he did not contend that it could not be improved upon, but that it was a very good beginning place and something with which the School Board could start work in order to accomplish a plan of that nature which was suitable to local conditions.

The plan, in my judgment, is worth the most careful consideration by the school district and by the court.

The defendant has offered a plan which, I think, is excellent as far as it goes. The defendant has told me that there has been, during the past year and that there will be to an increasing extent during the coming year, a substantial increase in faculty integration.

I have told the lawyers in this matter from the beginning, during the course of several of our pre-trial discussions, that in my judgment that was the point at which to begin. The law tells us that the system of segregated schools, or the system under which particular schools were known or designated or regarded as white schools or negro schools must be removed, and that steps

must be taken whereby the schools were sufficiently integrated that they were regarded simply as schools, as distinguished from white or negro. And I have told you gentlemen from the outset that I thought the first step to accomplish that objective would be to strive to assign your faculty members in essentially the same ratio for each school that the negro-white faculty population bears, that is about two-thirds white and one-third colored. And if that were accomplished, I thought that would be a long step toward breaking down the designation or recognition of particular schools as being white or negro schools.

The defendant told me that they were hopeful of having some 2500 teachers out of the 10,000, about twenty-five percent, teach in schools of a predominantly different race than that of the teacher.

I noted with some misgivings, however, that the witnesses indicated that they were not particularly hopeful that this higher figure could be achieved. And I was mindful, too, of the testimony that only a volunteer, that only voluntary compliance by the teachers has been required.

I recognize full well that there may be many problems in this area, that if a teacher of competence and experience simply declines to accept an assignment, the School Board is faced with a difficult problem as to whether to terminate the teacher's contract or to use such a teacher elsewhere. I have no solution or suggestion of that problem except to say that it is the obligation of the board to achieve such a result.

Defendant has also told me that the plan of the prototype schools is to be extended. It is my recollection of

the evidence that you told me you had five in effect in this past year and expected to extend that to seventeen for the coming year.

A prototype school, as I understand it, was one in a mixed racial residential area, and wherein by an integration of the faculty on approximately two-thirds one-third basis, by having outstanding faculty members and by other programs, the board expected to attract students of both races, and thus bring about a voluntary integration.

I think that program has much merit, and I hope it works. But it has the appearance of being a rather slow and tedious process when we consider that there are only seventeen schools anticipated within the coming year out of all of those within the district.

So that brings us to the question as to what we ought to do at this time, what we ought to do prior to September of 1969, a date some five or six weeks off.

I am convinced that there does not remain sufficient time for the board to put into effect an overall and comprehensive zoning or pairing plan such as the government has urged upon us. It would mean, as I understand it, that perhaps half of the 250,000 children in the school district would attend schools other than the ones they attended last year. It would mean that every route of every school bus would have to be redrawn. It would mean that every private bus operator would have a different route and a different schedule as well as, of course, the public transportation system, some of the buses of which, as I understand it, serve the school children exclusively.

While the government expert expressed the view that the school authorities dropped everything else and worked

on nothing but this matter for thirty days, he felt that probably could be done. I am left with the strong feeling that to order a program of that magnitude to be put in effect to begin on the first of September would actually result in a chaotic condition, and certainly for a matter of months would not solve the problem that we have before us.

So, it is my advice and instruction to the board at this time that as of September of this year the board proceed with its plans to desegregate its faculty to as full and high a degree as possible. I think this should be a primary objective and I think it should be carried out in all areas.

I was impressed by the statistics which the government offered tending to show, for example, the practice with respect to substitute teachers, and whether it was by design or whether it was by accident, it was certainly surprising that in almost every instance where a white substitute teacher was called, she ended up in a white school, and where a negro substitute teacher was called, she ended up at a negro school. That is simply an illustration of an area wherein I think the condition can and should be improved immediately.

I would expect the board to achieve the twenty-five percent, or twenty-five hundred, objective that it has set in making permanent cross-over assignments.

If I may be permitted an extrajudicial comment here, I have the feeling, Mr. Reynolds, that your client has tended to use the prior orders of the court here sort of as a crutch to lean on in this area. I think the board has been too prone, when suggestions or proposals of further integration efforts have been made, to take the position

that the board is complying with the court's order and that is all that they are obliged to do.

It should be understood that the orders of the court are a minimum requirement and not a maximum requirement, and that whatever further progress can be made by the board on its own initiative, it makes the further steps which the law requires much less painful and much less difficult.

I would instruct the board, too, to go forward with its prototype school plan, and to use every effort to attract voluntarily an integrated student body to as many of its schools as possible.

I want, Mr. Reynolds, by October First, a report filed with the clerk of the court, please, showing me the population by race of each of the schools in the district and the faculty breakdown by race of each of the schools in the district.

In light of those figures which should be available at that time and which should show with some degree of certainty the situation for the 1969-70 school year, I want you to consult with the agency at the University of Texas, with which you have told me you have already been in contact and whose services you have already sought, to the end that a complete zoning and/or pairing plan may be devised to be effective in September of 1970, a year from now.

I would like, in connection with that proposal to be filed with the clerk by January 1, 1970, I would like in connection with that proposal an estimate of what racial population may be expected to result under that plan for each of the schools.

The government, you will recall, showed us a series of maps which illustrated the general pattern of attendance with respect to some fifteen or eighteen schools. I do not require a map of that nature for each of the schools in the Houston district, but from your statistical data, the residence addresses of the various students, I would like a comprehensive report as to what may be anticipated under the plan which you propose.

This is not the maximum which the board should do, but again it is the minimum. It may well be that there are areas where, within the coming year, they feel that certain zoning or pairing should take place. I simply have not had an opportunity and do not now, prior to the first of September, to try and pick out particular schools or particular areas where I think that would be effective. But I say to you this is the board's responsibility and I would be hopeful that they take whatever action that can be taken consistent with sound educational practices to accomplish as much in that area as possible during the coming year.

I suggest that the proposal which the government expert offered to us appeared to me to have much to be said for it. He obviously had given it a great deal of time and thought and attention. There are probably things in which it can be modified or altered which would better suit local conditions, matters with which perhaps the school authorities are familiar and with which perhaps he was not. But in any event by the first of January I would like to have filed this proposal, anticipating that it would be in effect September 1970.

That is all, gentlemen.

APPENDIX B

IN THE

United States District Court

FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 10444

DELORES ROSS, a minor, by her Next Friend, Mary Alice Benjamin, et al, *Plaintiffs,*

UNITED STATES OF AMERICA, *Plaintiff-Intervenor,*

vs.

ROBERT ECKELS, as President of the Board of Trustees of the Houston Independent School District, et al, *Defendants.*

(Filed June 1, 1970)

Weldon H. Berry, Esq., Houston, Texas, and Conrad K. Harper, Esq., New York, New York, attorneys for Plaintiffs.

John M. Rosenberg, Esq., Washington, D. C., attorney for Plaintiff-Intervenor.

Brown, Kronzer, Abraham, Watkins & Steely (W. James Kronzer, Esq.), Houston, Texas, attorneys for Defendants.

May 30, 1970

MEMORANDUM AND ORDER:

This is another chapter in the effort presently to create a unitary school system, and further to disestablish the dual school system maintained by the defendant Houston Independent School District prior to 1954. This action was filed in December, 1956. Any number of hearings have been held, and orders have been entered, over the intervening years. Beginning with a one grade per year desegregation plan; followed by an acceleration of this to a two grade per year plan; followed by the integration of athletics and other extracurricular activities; and culminating with the freedom of choice plan[1] presently in operation and initiated pursuant to order of this Court of September 5, 1967, Houston has, in my judgment, come a long way along the road. Substantial integration has been achieved in many areas;[2] and, of almost equal importance, has been achieved without incident or racial confrontation.

To bring what has been done, and what remains to be done, into proper perspective, these facts should be borne in mind. The Houston Independent School District is the largest in the South, and is the sixth largest in the nation. It covers 311 square miles. It has a student population of 238,460, of which almost exactly two-thirds (66.9%) are white and one-third (33.1%) black. It employs 9,624 teachers, of which approximately two-thirds (68%) are white, one-third (32%) black. It operates 230 schools

---

1. Pursuant to United States v. Jefferson County Board of Education, 372 F.2d 836 (5th Cir. 1966).

2. Approximately 25% of the Negro students now attend formerly all white schools. Every faculty is integrated, though not as thoroughly as is now required by law.

on 225 campuses,[3] of which 170 are elementary schools, 36 are junior high and 24 are high schools.

Pursuant to a motion by the plaintiffs for further relief, a hearing was held June 14-23, 1969. At that time I found, and so advised the parties, that the incidence of integration, both of faculty and student body, under the present plan did not meet the requirements of the recent cases. [*Green v. County School Board of New Kent Co.*, 391 U.S. 430 (1968); *Alexander v. Holmes County Board of Education*, 396 U.S. 19 (1969); *Singleton v. Jackson Municipal Separate School District*, "Singleton III", 419 F.2d 1211 (5th Cir. 1969). The School Board was directed to devise a new plan and to submit same for consideration by January 1, 1970.[4]

The Board of Trustees of the Houston Independent School District is composed of seven members, all elected. An election was held for members of this Board in December, 1969. Four members of the Board were replaced by the same number of new members. The new Board took office January 10, 1970. Almost immediately the firm of attorneys who had represented the Board during the 14 years of litigation in this matter withdrew from the case, and new counsel—theretofore completely unrelated to this litigation in any fashion—was employed and entered an appearance. The new counsel requested, and was granted, a matter of a few weeks to familiarize himself with the litigation. At the request of new counsel, the defendant Board has hastily prepared detailed student lo-

3. Five schools are joint junior-senior high schools: Furr, Lincoln, Scarborough, Washington, B.T., and Williams.

4. This was prior to Singleton, supra, but anticipated that holding to some extent.

cator maps showing the residence, race[5] and grade standing of each of the almost one-quarter million students in the School District. Thus, now, for the first time, one may forecast accurately the effect of any new plan of integration which may be invoked.

The opinion of the Supreme Court in *Green,* supra, and of the Court of Appeals for the Fifth Circuit in *Singleton,* supra, have been cited in cases too numerous to mention as furnishing the criteria which a school district is required to meet to establish the desired "unitary" system. The conversion involves the merger of faculty and staff, students, transportation, services, athletics and other extracurricular school activities (*Singleton,* supra, and *Ellis v. Board of Public Instruction of Orange County, Florida,* ____ F.2d ____ (1970). There is no controversy here except as to the means to be used for increased student integration. While the integration of faculty and staff today does not meet the two-thirds white—one-third Negro ratio required by *Singleton,* the defendant Board recognizes its obligation in this respect and does not contest the issue.

In all other respects (transportation, services, facilities, athletics and other extracurricular school activities), the defendant Board is presently in compliance with the *Green* and *Singleton* requirements.[6]

---

5. This statement is not entirely accurate as to race. Questionnaires submitted to all the students in some instances were returned with this question unanswered. These are shown as "race unknown" in the statistics discussed hereafter. In only a few instances are these "unknown" figures of any great significance.

6. The plaintiff does not concede that the defendant Board is in full compliance in these respects, but neither plaintiff nor Intervenor has raised the question, or offered evidence to the contrary. From my own continuing familiarity with the problem, I am sure that such is the case.

The only question which remains is that of student integration. The question is not easily resolved. Few meaningful guidelines have been established by the appellate courts. In the great majority of cases, without saying what is required, the appellate courts have simply said to the District Courts, "This is not enough." (See the opinion of Judge Coleman, dissenting in part, in *Singleton v. Jackson Municipal Separate School District,* ____ F.2d ____ (5th Cir. en banc, January 21, 1970).

In approaching the problem I consider it to be the duty of this Court to adopt a plan which will serve realistically (a) to bring about now a high degree of overall student integration, (b) to assure that every student, if not receiving his education in an integrated atmosphere today, soon will do so, and (c) to do this in a manner which is consistent with good education, good administration, and with sound economic practices.

Presently there are seven plans before the Court for consideration. They will be denominated hereafter as follows:

1. The plaintiff's plan;
2. The Intervenor (U. S.) or the Stolee plan;
3. The Ted-Tac plan;
4. The freedom of choice plan;
5. The neighborhood zoning plan;
6. The equi-distant attendance plan; and
7. The geographic capacity plan.

Numbers 4 and 5 were filed herein December 31, 1969, by the outgoing (1969) School Board. Numbers 6 and 7 have been recently filed by the new (or 1970) School Board. The plans will be briefly summarized hereafter.

1. THE PLAINTIFF'S PLAN.

This is a computerized scheme composed by a Computer Center in Boston, Massachusetts, whose services were availed of by the National Association for the Advancement of Colored People Legal Defense Fund.[7] It is based upon the premise that the law requires that every school in the District shall have the same ratio of white to Negro students as prevails throughout the District. For practical purposes plaintiff's counsel concedes that some margin must be allowed, and suggests that this margin should be no more than 10% above or below. Thus every school would have a ratio of white to Negro students ranging from 57% white—43% Negro to 77% White—23% Negro.

Further recognizing the realities of the situation, however, the computerized plan does not go this far, by reason of the admittedly prohibitive costs involved. The plan as submitted would result in no school having a student body in excess of 50% Negro. In light of the geographical size of the District and the residential patterns which prevail, to accomplish this result would require the daily busing of an estimated 44,000 students, approximately 34,000 white and 10,000 Negro. The plan is designed to restrict the maximum haul to a distance of 10 miles from the home of any student, and as not to overtax the capacity of any given school.

The plaintiff's witness estimates the annual and recurring cost of the busing at the figure of $1,100,000. Witnesses for the defendant Board have estimated that an

7. I am advised that this Center has been the source of many similar plans advocated by the plaintiffs in other school desegregation suits in major cities throughout the country.

initial capital outlay for new equipment would come to $2,800,000, with a recurring annual expense of $1,300,000.

If the premise on which this plan is based is accepted, then plaintiff's plan affords a reasonably efficient way to achieve this result.

I am unable, however, to accept this premise. The overall educational process — the assurance that a high school graduate will have received a full and well-rounded education — involves a great deal more than the body count at the schools which he attended. The one million plus dollars admittedly required annually to implement the plaintiff's proposal can be better spent in providing more and better teachers, newer and more efficient schools and other facilities than in increasing ever so slightly the Negro-to-white ratio in a few specific schools. There are better ways to accomplishing comparable and acceptable results.

The mass busing procedure raises more problems than it solves. In a hypothetical situation, which would arise many times under the plaintiff's proposal, a black child who lives two blocks from School A, a predominantly black school, is to be bused, together with 50% of his schoolmates, to School B, a predominantly white school, ten miles away; and 50% of the students at School B are to be bused the same 10 miles in the opposite direction. The plaintiff's plan is silent as to how the black children who are to be required to go, no doubt against the will of many of them, should be chosen. Are the school authorities to set up some draft system, with deferments based on hardships or other valid considerations? Are the names of those to fill the quota to be drawn in public from a

goldfish bowl? Is provision to be made for a review procedure, with ultimate appeals to the courts?[8]

The hypothetical child who is thus transported against his wishes will be deprived of many educational opportunities. He will be unable to participate in athletics, in dramatics, or in band for he will be unable to remain after school to practice and participate in these activities. His bus would leave without him. This result would discourage the integration of athletics and other activies commanded by *Singleton* and adopted many years ago by the Houston school District, for only those residents within a close proximity to the school might participate.

Our hypothetical student well might say to the Superintendent of Instruction. "You are excluding me from School A, two blocks from my home, because I am black, and for no other reason. How can you do this when the Supreme Court of the United States in its latest pronouncement on the subject[9] imposes on you the duty 'to operate as [a] unitary school system *within which no person is to be effectively excluded from any school because of race or color?*' " (Emphasis added.) I would be interested to know how this question would be answered.

---

8. This suggestion is not as absurd as it sounds. This Court has been called upon in perhaps a dozen instances within the last few months to examine school procedures with respect to the right of a child to attend school with his hair too long; her skirts too short; charged, but not convicted, of possession of marihuana; the distribution of underground newspapers, etc. We well might be called upon to review a procedure, alleged to be discriminatory, which requires some black students to be bussed ten miles to school, while their black neighbors are permitted to attend schools within two blocks of their homes.

9. Alexander v. Holmes Co., supra, 396 U.S. at p. 20.

No Supreme Court decision, and no other controlling authority with which I am familiar, requires that a predetermined ratio be established, and children bussed from distant areas to meet these quotas. I am unalterably opposed to such procedure and would impose this upon the School District only if specifically required to do so by order of a higher court.

2. THE INTERVENOR'S (UNITED STATES OF AMERICA) PLAN.

The proposal of the United States is based on the testimony of Dr. Michael J. Stolee, Director of the Florida School Desegregation Consulting Center. While it is not complete in several respects,[10] nevertheless the proposal shows a thoughtful consideration of the problems of the Houston District. The plan includes a combination of the principles of zoning, pairing, and busing. The zones, of course, are gerrymandered to increase the integration factor.

As I interpret the plan and projected figures, the results may be summarized as follows:

(a) With respect to the senior high schools, zoning is used exclusively. A child would be required to travel a maximum of five miles to reach school. The proposal would eliminate all-black high schools. One all-white high school would remain. Most of the high schools would have a white population varying from approximately 30 to 60%.

---

10. The plan admittedly shows only an approach to the problem, not a solution. Of the 170 elementary schools, data on only 78 was considered.

(b) With respect to the junior high schools, zoning again is used with a single exception, where pairing is employed. Again the plan would eliminate the all-Negro junior high. Three all-white junior highs would remain. In general, the white population of the others would be approximately 50 to 70%.

(c) With respect to the elementary schools, of course, the problem is more complex because of the large number of students concerned and of the fact that by reason of their tender years any extended travel is undesirable. Under the Stolee plan, 27 elementary schools are zoned and 51 are paired. The plan contemplates that the children would walk to the school nearest their homes from which point they would be bussed to the school with which it is paired. This, however, would leave approximately 15 all-black elementary schools. The plan recommends that busing be utilized to eliminate this condition. The number of students to be bussed under this proposal, the distances which they would be transported, and the expense thereof do not appear in the evidence.

This plan is too incomplete to be accepted in its present form. Other more attractive proposals are available.

3. THE TED-TAC PLAN.

The Texas Educational Desegregation Technical Assistance Center is an agency funded by the Department of Health, Education and Welfare at the University of Texas to offer assistance to various interested parties with problems in its field. At the hearing in July, 1969, the School Board was directed to seek the assistance and advice of this agency ("Ted-Tac") in framing its (the Board's) new proposal which was to be filed January 1, 1970. The

Board states that there was no consultation; rather that the Ted-Tac staff visited the various schools in the District and received a mass of information from the Board's files; and thereafter drafted its own plan without regard to the Board's desires, and after consultation only with the officials of HEW. Hence, the defendant Board does not espouse or endorse the plan. In the later stages of this proceeding, the Government has supported it. In general, it is much like the Stolee proposal.

The purpose was to make all schools majority white, although without an effort to achieve the precise white-black ratio which was the aim of the plaintiff's plan.

This plan, again, is based primarily on zoning and pairing. There would remain, however, 13 essentially all-black elementary schools. The solution recommended for the elimination of this result is the pairing of these with 13 unidentified predominantly white schools. The available white bodies in the vicinity of these 13 schools, however, are already put to use elsewhere to integrate other predominantly black schools. Hence, each of these 13 schools would of necessity be paired with a predominantly white school a great distance away. Thus, the recommended solution again is a cross-town busing plan, though much less extensive than that proposed by plaintiff. It is suggested that use be made of the extensive freeway systems of this city to provide rapid transportation for the great distances involved. There is no evidence before me as to the number of students to be bussed or the cost thereof.

At the time the proposal was submitted in July, 1969, the plan was incomplete and the results to be contemplated could not be determined with any degree of cer-

tainty with respect to many of the schools. Since preparation of the pupil locator maps, however, counsel for the Government has made additional calculations which in large measure fill these gaps.

As I understand these results, they will be essentially as follows.

With respect to the high schools, there will be no all-Negro schools, and no all-white schools.

There will be no high schools with less than 50 white students, and two with less than 50 Negro students.

There will be no high schools with less than 100 white students, and two with less than 100 Negro students.

With respect to the junior high schools, it appears that there will be no all-Negro junior highs; four all-white junior highs.

There will be no junior highs with less than 50 white students, and 6 with less than 50 Negro students.

There will be no junior highs with less than 100 white students, and 7 with less than 100 Negro students.

With respect to the elementary schools, the results will be these. Two all-Negro elementary schools will remain, 24 all-white elementaries.

There will be 6 elementary schools with less than 50 white students, and 47 with less than 50 Negro students.

There will be 9 elementary schools with less than 100 white students, and 49 with less than 100 Negro students.

As stated above, there will remain the cross-town busing with respect to 13 predominantly Negro elementary

schools paired with 13 predominantly white elementary schools.

Ted-Tac does not limit its recommendation to the desegregation factor. It recommends the closing of certain schools and a change in designation of others because of their curriculum. It is suggested, "There is no way for the students in these small high schools to receive a comprehensive course offering due to the limited enrollment." I consider the choice of curriculum to be within the discretionary province of the School Board and no part of the present controversy.

4. FREEDOM OF CHOICE PLAN.

This is a proposal of the 1969 School Board and simply urges that the present plan of freedom of choice be maintained. The Court indicated in July, 1969, that this course might not be followed. This was so because, in view of the size of the District, the residential patterns, and the obvious desire of parents that their children attend the school nearest their home, it did not appear that the degree of integration required by law would be attained within the foreseeable future.

The present composition of the schools under freedom of choice is as follows: Of the 24 high schools, 3 are all-Negro, but with an additional 4 having less than 5 white students. There are no all-white high schools. Seven of the high schools have less than 50 white students, and 6 have less than 50 Negro students. Seven high schools have less than 100 white students, and 12 have less than 100 Negro students.

With respect to the 36 junior high schools, 4 are all-Negro and an additional 4 have less than 5 white stu-

dents. There is one all-white junior high. There are 11 junior highs with less than 50 white students and 13 with less than 50 Negro students. There are 11 with less than 100 white students, and 14 with less than 100 Negro students.

Of the 170 elementary schools, 26 are all-Negro, with an additional 11 having less than 5 white students. There are 40 all-white elementaries. There are 43 elementary schools with less than 50 white students, and 92 with less than 50 Negro students. There are 48 elementary schools with less than 100 white students, and 100 with less than 100 Negro students.

Looking at the same figures from a different approach, the percentage of Negro students attending schools with 50 or more white students is as follows: In the high schools, 10.1%; in the junior high schools, 18.8%; and in the elementary schools, 26.6%.

The percentage of Negro students attending school with at least 100 white students is as follows: In the high schools, 10%; in the junior high schools, 18.8%; and in the elementary schools, 21.4%.

As indicated in the earlier paragraphs hereof, by reason of the large number of all-Negro or essentially all-Negro schools and of the low overall instance of integration, I am of the view that these results are insufficient.

5. NEIGHBORHOOD ZONING PLAN.

This is another alternative proposed by the 1969 School Board and filed December 31, 1969. It would zone the elementary, junior high, and high schools in the District,

and is designed to achieve a higher degree of integration. Insofar as I can determine, there is no systematic scheme or plan followed in the designation of these zones. Natural barriers, hazardous crossings, and school capacities are considered.

The results under this zoning plan are are follows. With respect to the 24 high schools, there would be no all black high schools, two all-white. There would be one high school with less than 50 white students, and 6 with less than 50 blacks. There would be two high schools with less than 100 white students, 9 with less than 100 blacks.

With respect to the 36 junior high schools, 5 would be all-white, none all-black. Two of the junior highs would have less than 50 white students, 10 less than 50 Negro students. Two would have less than 100 white students, and 14 less than 100 Negro students.

With respect to the 170 elementary schools, 52 would be all-white, 4 all Negro. Twenty-eight would have less than 50 white students, 95 would have less than 50 Negro students. Thirty-four would have less than 100 white students, 100 would have less than 100 Negro students.

6. THE EQUI-DISTANT ZONING PLAN.

This is a proposal advanced by the new or 1970 School Board. Admittedly, it is patterned very closely after the plan approved by the Court of Appeals for the Fifth Circuit for the Orange County, Florida, School District in *Ellis v. Board of Public Instruction of Orange County, Florida, February* 17, 1970, ____ F.2d ____. In that opinion the Court noted that the size of the District mag-

nified the Board's problem. Many characteristics of the Orange County District are similar to those of Houston.[11]

This plan contemplates that the District will be zoned (separately, of course, for high school, junior high and elementary schools) drawing the zone lines exactly equidistant between the adjacent schools. Each student is required to attend the school nearest his home at the time of enrollment—and to remain in that school for the ensuing semester, regardless of a later change of residence. Where the capacity of a school would be exceeded by this method of determining the composition of its student body, the geographic area to be served by such school would be decreased (and that of the neighboring school increased) by narrowing its boundaries, with a line or lines parallel to those originally proposed; and in every case effecting the change where one is necessary in a manner which will increase the integration factor.[12] The only exception to the requirement that a student attend the school closest to his home would permit the voluntary transfer of a student whose race is in the majority to another school in which his race is in the minority, with these options:

(a) If such student chooses the nearest school in which his race is in the minority, he is afforded auto-

---

11.

Orange County	Houston
910 square miles	311 square miles*
98 schools	230 schools
82,868 students (82% white)	238,460 students (67% white)
3,563 teachers (82% white)	9,624 teachers (68% white)

*Including 150 square miles within the City of Houston, the remainder being suburban or semi-rural.

12. From the original drawing of the lines with mathematical or geometrical precision equi-distantly between the schools, there have been surprisingly few instances in which the zones thus designated must be reduced by reason of school capacity. Of the 230 schools, only 53 would require modification (35 elementary, 11 junior high, and 7 senior high).

matic admission despite the capacity of the school (i.e., he is permitted to "bump" a student of the opposite race) and he is afforded free transportation from his home;

(b) If such student prefers any other school in the District in which his race is in the minority, he may attend on a "space available" basis, and if he furnishes his own transportation.

Under this plan[13] there will be no all-Negro high schools and one all-white high school.

There will be no high schools with less than 50 white students, and 6 with less than 50 Negro students.

---

13. An overall consideration of the figures from the various statistical studies submitted by the parties shows certain obvious errors with respect to the figures relative to this equi-distant zoning plan, and the geographical-capacity zoning plan to be discussed hereafter. The figures shown for freedom of choice are taken from present enrollments, and are accurate. This reflects, for example, 12,601 Negro high school students; 18,491 Negro junior high school students; and 47,881 Negro elementary students, for a total of 78,973 Negro students. Comparable figures for the equi-distant zoning plan show 8,702 Negro high school students; 17,211 Negro junior high school students; and 46,030 Negro elementary students, for a total of 71,943. Comparable figures for the geographical capacity zoning plan show 9,755 Negro senior high school students; 16,575 Negro junior high school students; and 47,895 Negro elementary students, for a total of 74,225 Negro students. It should be borne in mind that the figures for the equi-distant zoning plan and for the geographical capacity zoning plan are both projections. The discrepancy is explained by these two considerations. First, the "race unknown" students are not included in either of the latter two plan figures; and second, these figures result in part from human error. They are made from an actual count of the dots, indicating the residence of each of the almost 240,000 students, each dot being somewhat smaller than the head of a pin. No two counts result in quite the same answer. For practical and comparative purposes, however, I think these inaccuracies may be disregarded.

There will be no high schools with less than 50 white students,[14] and 8 with less than 100 Negro students.

There will be no all-Negro junior highs and 2 all-white junior highs.

There will be no junior high schools with less than 50 white students, and 8 with less than 50 Negro students.

There will be one junior high school with less than 100 white students, and 12 with less than 100 Negro students.

Of the 170 elementary schools, 4 will be all-Negro and 51 all-white.

There will be 19 elementary schools with less than 50 white students, and 87 with less than 50 Negro students.

There will be 28 elementary schools with less than 100 white students, and 98 with less than 100 Negro students.

To look at these anticipated results solely from the standpoint of the Negro student, there will be no high schools with a Negro student population exceeding 90%; and only 2 wherein 70% is exceeded. These two (Kashmere and Yates) show a combined Negro-white population of 2,831-409, respectively. Thus, 32% of the Negro high school students will attend schools with a Negro population exceeding 70%; and none exceeding 90%.

At the junior high school level, one school (Ryan) will have an anticipated Negro student population in excess of 90%—1,781 Negro, 93 white, or 94.5% Negro. Thus, 11% of the total Negro junior high school students

14. This is probably accurate, in that the Worthing School shows an expected attendance of 94 whites, 1,228 Negro and 774 "race unknown".

will attend school with a population exceeding 90% Negro.

Comparable comparisons for the 170 elementary schools have not been submitted by the parties.

7. GEOGRAPHIC-CAPACITY ZONING PLAN.

This is a second plan filed and urged by the 1970 School Board. It is closely patterned after the plan approved by the Court of Appeals for the Fifth Circuit in *Bivins v. Bibb County Board of Education,* February 5, 1970, ____F.2d____.

Under this plan a zone is drawn around each school in a non-discriminatory manner, with the size of the zone determined and measured by the capacity of the school. Once the zone is determined for a given school year, every student residing within that zone must attend such school, subject to the majority-to-minority transfer rule required by *Singleton.*

The plan contemplates that in the delineation of the zone lines consideration might, and should, be given to questions of natural boundaries, traffic hazards and pupil density.

The results under this zoning plan are as follows. With respect to the 24 high schools, there would be no all-Negro high schools, and one all-white. There would be no high school with less than 50 white students, and 2 with less than 50 Negro students. There would be no high school with less than 100 white students, and 8 with less than 100 Negro students.

With respect to the 36 junior high schools, none would be all-Negro, and 4 would be all-white. None of the junior

high schools would have less than 50 white students, and 10 would have less than 50 Negro students. None of the junior high schools would have less than 100 white students, and 12 would have less than 100 Negro students.

With respect to the 170 elementary schools, 4 would be all-Negro, and 46 would be all-white. Thirteen elementary schools would have less than 50 white students, and 86 would have less than 50 Negro students. Twenty-nine would have less than 100 white students, and 99 would have less than 100 Negro students.

Again, looking at the figures only from the standpoint of the Negro student, no high school will have a Negro population exceeding 90%, and only two exceeding 70% (Kashmere, 83%; and Yates, 79%). Thus, 32% of the Negro high school students will attend schools with a Negro population exceeding 70%; and none exceeding 90%.

At the junior high school level there will be no junior high school with a Negro population exceeding 90%.

Of the seven alternatives discussed above, several may be rather summarily dismissed.

With respect to the plaintiff's plan, the inordinate expense which it would entail and the very legitimate complaints, both practical and legal, which might be interjected by the 44,000 students to be transported render it completely inappropriate.

With respect to the Intervenor or Stolee plan (No. 2), it is incomplete. Insofar as comparisons are possible, it appears to follow the same approach, and achieve the same results as the No. 3, or Ted-Tac, plan. If it came

to a choice between these two, I would be inclined to leave the choice to the defendant School District.

The freedom of choice plan (No. 4) has been administered fairly and completely without discrimination by the defendant District for several years. Literally, any child who was unhappy with his original school assignment could enroll in any school of his choice simply by appearing at the schoolhouse door on the enrollment date. Such a scheme has much to commend it in theory; but it is condemned by recent authorities because it does not achieve a sufficiently high incidence of integration. For that reason, it cannot be further considered here.

The "neighborhood zoning plan" (No. 5) advocated by the 1969 School Board is not now urged or endorsed by any of the parties to the suit. While it increased the incidence of integration to some extent, it did not do so as effectively as the plans to be discussed hereafter.

There remain the Ted-Tac plan or, its counterpart, the Stolee plan, and the two plans submitted and equally endorsed by the Board. All three achieve a high degree of integration and, when coupled with the other requirements of *Singleton* discussed above, in my judgment will achieve a clearly unitary system.

Of the three, I am of the view that the equi-distant plan will best serve the needs of the student body, and will afford as uniformly a fair and non-discriminatory school assignment plan as well may be devised. In accepting this plan, I am mindful of the admonition contained in the *Ellis* opinion, and reiterated in *Andrews v. City of Monroe,* ____ F.2d ____ (5th Cir. 1970), and in *Singleton IV* [*Singleton v. Jackson School District,* ____ F.2d ____ (5th Cir. 1970] that the *Ellis* neighborhood assignment plan

is not necessarily the final answer for all large Southern school districts. It is not to be followed blindly. In my judgment, however, it not only creates a completely unitary system, but offers advantages not otherwise available.

It is true that the Ted-Tac proposal gives a slightly higher incidence of integration than do the equi-distant and geographic capacity plans, which are, for all practical purposes, the same in this respect. A shorthand comparison of the integrational effect of these three, with the present freedom of choice plan, upon the Negro student, is reflected in the following table:

	Freedom of Choice	*Ted-Tac*	*Equi-Distant*	*Geographic Capacity*
High Schools				
All Negro	3	0	0	0
Less than 50 whites	7	0	0	0
Less than 100 whites	7	0	0	0
Junior High Schools				
All Negro	4	0	0	0
Less than 50 whites	11	0	0	0
Less than 100 whites	11	0	1	0
Elementary Schools				
All Negro	26	2	4	4
Less than 50 whites	43	6	19	13
Less than 100 whites	100	9	28	29

The Ted-Tac proposal with the zoning, pairing and cross-town busing is attended with many disadvantages which to my mind outweigh the slight increase in integration. The pairing of many schools of necessity will cause a disruption of the present grade structure and the initiation of a new curriculum. It will require the reassignment of many teachers and almost all students. Without the cross-town busing feature of the "non-adjacent pairing", 13 predominantly all-black elementary schools would remain. Cross-town busing is objectionable in any event. Certainly that is true when applied entirely to children of elementary school age.

The geographic zoning plan offers an attractive solution. It offers a complete integration at both the high school and junior high school levels, and a high incidence with respect to the elementary schools. It is not unnatural for the defendant District to take cognizance in its zoning plan of natural boundaries, traffic hazards, and other such considerations. As is pointed out in *Ellis,* supra, however, it is this very factor of discretion in the drawing of the lines which renders such a plan suspect. No matter how high the integration factor under a plan drawn without strict guidelines, the contention can always be advanced that such lines might have been drawn differently, and with a better result. In short, while I am convinced it is not the case in the present instance, whenever a School Board draws its zone lines today in a discretionary fashion, it is subject to being charged with doing so to continue its dual system.

This leaves the equi-distant zoning plan. It is completely fair and impartial. Every child attends the school closest to his home. It will reduce travel to a minimum. It is non-discriminatory in all but one respect, namely, where

changes have been made to accommodate school capacities, they have been made in such fashion as to increase integration. Every Negro child at the high school and junior high school level will receive his education in an integrated atmosphere. The four all-Negro elementary schools will have student bodies as follows:

	Black	*White*	*Race Unknown*
Douglas	737	0	12
Henderson, N.Q.	570	0	3
Pleasants	530	0	6
Pleasantville	977	0	0

If it be assumed that the "unknowns" are all black, the total of 2,836 Negro students attending all-black schools is only 6% of the Negro elementary school total, or 3.9% of the overall Negro total. These four schools are located within sizable areas of high density Negro population. Their composition as all black, as is true of the all white student bodies, results from the city's residential patterns.[15] These four all-Negro elementary schools cannot be substantially integrated at this time without a program of cross-town busing.[16]

---

15. Like most other cities in the South, Houston has definite racial residential patterns. Unlike some other cities, however, these patterns within recent years have been subject to constant change. Sections of the city which a few years ago were inhabited almost entirely by whites are now almost 100% black. A number of the schools with which this Court has dealt in prior years as substantially all-white schools now under freedom of choice are predominantly black. Statistics show that approximately 20% of the students of the defendant District move their residence every year.

16. Compare the incidence of integration achieved here, overall and at every level, with that of the following recent Fifth Circuit cases: Ellis, supra; Bivins v. Bibb County, supra; Singleton IV, 1970, ____F.2d____; and Manning v. Board of Education of Hillsborough County, Florida, 1970, ____F.2d____.

These children, however, are not condemned to a segregated public school education. At worst, this condition will only continue through elementary school. At best, it may be corrected immediately, at the desire of any child so affected, who may transfer, and ride free of charge, to the nearest school in which his race is in the minority. Thus every Negro child has the opportunity for an integrated education today — the vast majority simply by attending the school nearest his home. Those elementary students who do not have it, and do not desire it today, will have it forced upon them at the junior high and high school levels. They will receive such education from a completely integrated faculty and staff.

In the presentation of this plan, as well as in *Ellis* upon which it is patterned, no mention is made as to whether, in drawing the equi-distant lines between schools, account is taken of impassable obstacles.[17] From my examination of *Ellis* and of the evidence offered here, I am of the view that in both instances the distances are taken "as the crow flies". In approving the equi-distant plan, I do so with this reservation, based on the following facts. Buffalo Bayou winds its tortuous way through the city and the School District area until it reaches the Turning Basin, from which point eastward it becomes the Houston Ship Channel. Of course, it may be crossed only where bridges are available. In many instances these are many miles apart. A freeway system encircles and crosses the city. These freeways may be crossed only where underpasses are provided for vehicular and pedestrian traffic. If the school closest to a child's residence is one-half mile away, but on the opposite side of Buffalo Bayou; and it may be

17. To be distinguished from traffic hazards, railroad crossings, etc., the by-passing of which might be desirable, but is not essential.

reached only by a travel of 6 or 7 miles, it seems foolish to require attendance at that school if there be another perhaps a mile from his residence in the opposite direction. A child is not required to swim or to fly to school. I am unable to determine the frequency with which this problem will present itself. It may be in some cases that the lines need be redrawn. More likely it can be surmounted by transfers or on an individual basis.

Further, with respect to transfers, this additional observation is in order. By what has been said heretofore with reference to allowing transfers only under the majority-to-minority rule, it is not intended to deny the School Board the authority to effect transfers for entirely legitimate reasons. Physically handicapped children, mentally retarded children, highly gifted children, those who seek vocational courses, and other special-course students, should be permitted to attend those schools offering appropriate facilities and courses. It goes without saying that all such transfers will be on a non-discriminatory basis.

Under this equi-distant proposal, every advantage of the neighborhood school is retained. The plan is economically and administratively sound. Additionally, the commands of *Brown I*[18] and of Alexander, supra, are fully met. In its assignment policy, the School District will be as color-blind as it is possible to be, still achieving a high degree of integration; and no child will be effectively excluded from any school because of race.

Counsel for the defendant Board will prepare an order instituting the equi-distant zoning plan for the assignment of students, referred to herein as Plan 6, essentially as de-

---

18. Brown v. Board of Education, 347 U.S. 483.

scribed in *Ellis*, supra, and with such modifications as are directed above. This plan for the assignment of students will be effective the beginning of the September, 1970, school session.

The order further will provide that principals, teachers, teacher's aides, and other staff who work directly with children shall be assigned in every school in such manner that the ratio of white-to-Negro teachers and staff in that school shall vary no more than 5%, above or below, from the ratio of white-to-Negro teachers and staff throughout the District (presently 68% white - 32% Negro). I am advised that within recent months the faculties of the various schools have been so assigned as greatly to increase the integration factor. This will be continued and accelerated until such time as the ratios above set out are met; and at no event later than the beginning of the September, 1970, term.

The order will further include the provisions required in *Singleton III*, supra, with reference to the transportation system, school construction and site selection, location of temporary classrooms and other matters designed to promote integration.

The order will further provide for the appointment by the Court of a bi-racial committee of local citizens of ten members to be charged with the responsibility of investigating, and consulting and advising with the School Board periodically, with respect to all matters tending to promote the operation of a unitary system as ordered in *Ellis*, supra, and in *Singleton IV*, supra.

The order will further provide that this Court will retain jurisdiction for a reasonable time to insure that the system is operated in a constitutional manner.

Attached hereto as appendices are charts showing the number of schools with the indicated ratio of white-to-Negro students under various proposals; and the anticipated student population, by race, under the plans discussed.

The clerk will file this Memorandum and furnish copies to all counsel of record.

Done at Houston, Texas, this 30th day of May, 1970.

BEN C. CONNALLY
United States District Judge

SENIOR HIGH

% Negro	*Equidistant*	*Capacity*[1]	*Tedtac*[2]	*Stolee*[3]
0 - 10.0	11	9	5	8
10.1 - 20.0	2	2	3	2
20.1 - 30.0	1	4	2	0
30.1 - 40.0	2	0	2	3
40.1 - 50.0	2	2	4	3
50.1 - 60.0	1	3	3	3
60.1 - 70.0	3	1	1	4
70.1 - 80.0	0	1	0	0
80.1 - 90.0	2	1	0	0
90.1 - 100	0	0	0	0
	24	23	20	23

[1] San Jacinto not listed.

[2] Lincoln, Scarborough, and Williams converted to Junior High. Bellaire Relief not included because completion was not contemplated at the time the plan was prepared; it will take excess white students from Sharpstown and Bellaire.

[3] Bellaire Relief not included, same as f.n. 2; but includes projection for Senior High at Sharpstown Junior-Senior.

SENIOR HIGH

% Negro	*Equidistant*		*Capacity*		*TEDTAC*		*STOLEE*	
	N	W	N	W	N	W	N	W
0 - 10	684	19410	418	14686	563	12456	818	17339
10.1 - 20	385	2917	638	4397	1339	7430	672	2932
20.1 - 30	314	920	1609	5347	870	3008	0	0
30.1 - 40	1129	2053	332	416	1306	2430	1538	3222
40.1 - 50	739	975	981	329	2819	3468	2225	2747
50.1 - 60	1228	94	2430	1672	3235	2731	2384	2481
60.1 - 70	1392	701	458	194	1524	879	3421	2962
70.1 - 80	0	0	1773	359	0	0	0	0
80.1 - 90	2831	409	1448	286	0	0	0	0
90.1 - 100	0	0	0	0	0	0	0	0
	8702	27,479	10,087	27,686	11,656	32,402	11,058	31,683

SENIOR HIGH

SCHOOL	*EQUIDISTANT* Total Stud.	%Neg.	*CAPACITY* Total Stud.	%Neg.	*TEDTAC* Total Stud.	%Neg.	*STOLEE* Total Stud.	%Neg.
Austin	1598	7.0	1938	20.0	2109	31.4	1873	43.3
Bellaire	3143	0	2653	.04	3467	6.4	2982	0[1]
Bellaire Relief	1907	.4	1869	.9	—	[1]		[1]
Davis	1621	34.0	1419	22.0	2045	43.6	1771	51.3
Furr	955	41.6	977	54.0	1030	44.6	975	36.0[2]
Sam Houston	3199	5.0	3343	12.0	3220	17.7	2814	18.5
J. Jones	1680	35.0	1801	13.0	2287	23.1	2188	30.5
Cashmere	1875	85.0	1753	83.0	1950	56.3	1584	63.4
Lamar	2098	1.0	2121	3.0	2284	.3	1480	4.9
Lee	1740	4.0	2157	4.0	2489	5.1	1730	.1
Lincoln	772	44.0	753	44.0	—	[3]	663	44.3[2]
Madison	1008	5.0	1732	3.0	1591	21.4	1592	32.2
Milby	2517	6.0	1732	1.5	2388	8.1	2596	8.0
Reagan	1698	11.0	1932	26.0	2769	15.8	2341	8.2
San Jacinto	604	63.0	—	—	1644	43.8	2437	45.3
Scarbrough	726	4.0	730	3.9	—	[3]		[3]
Sharpstown		[3]		[3]		[3]	796	8.9[2]
Sterling	1672	12.0	1862	21.0	1627	39.3	2031	3.1
Waltrip	1930	4.0	2579	5.4	2780	11.8	2577	9.4
B. T. Washington	806	68.6	700	58.5	1568	47.6	1233	52.5
Westbury	2323	1.0	1595	0	2391	.6	2219	1.8
Wheatley	1248	25.0	2124	54.3	2356	51.2	1862	52.8
Williams	735	62.0	693	66.0	—	[4]	1368	66.1
Worthing	2096	58.0	1984	49.0	1660	56.6	1876	69.9
Yates	1429	86.0	2240	79.0	2403	63.4	2555	63.9

[1] Not included in plan because not projected to be completed at this time; will take excess white students from Bellaire and Sharpstown.

[2] Stolee combined statistics for Junior and Senior High. Students allocated 50% each to Junior and Senior High.

[3] Proposed as Junior High only.

[4] Proposed as Junior High only.

JUNIOR HIGH

% *Negro*	*Equidistant*	*Capacity*	*Tedtac*[1]	*Stolee*[2]
0.0 - 10.0	17	16	9	11
10.1 - 20.0	1	1	5	5
20.1 - 30.0	4	5	4	2
30.1 - 40.0	1	0	3	4
40.1 - 50.0	1	2	5	5
50.1 - 60.0	0	0	1	2
60.1 - 70.0	1	3	3	1
70.1 - 80.0	4	4	2	2
80.1 - 90.0	6	5	3	3
90.1 - 100	1	0	0	0
	—	—	—	—
	36	36	35	35

[1] Proposes Booker T. Washington as Senior only.

[2] Proposes Williams as Senior only.

JUNIOR HIGH

% *Negro*	*Equidistant*		*Capacity*		*Tedtac*		*Stolee*	
	N	W	N	W	N	W	N	W
0-10	1014	26653	772	25833	499	17316	653	21254
10.1-20	249	1144	293	1275	1529	7602	2690	4842
20.1-30	1335	4684	1813	5563	2161	6448	1016	2833
30.1-40	252	405	0	0	2290	3915	1873	3296
40.1-50	692	944	1609	1729	3324	4512	3272	3669
50.1-60	0	0	0	0	1493	1145	1468	2059
60.1-70	739	380	2134	1145	2047	1097	1120	707
70.1-80	3507	1043	2761	716	3032	889	1478	3447
80.1-90	7642	998	7293	1166	4216	695	4241	773
90.1-100	1781	93	0	0	0	0	0	0
	17,211	36,344	16,675	37,427	20,591	43,619	17,811	42,880

JUNIOR HIGH

SCHOOL	*REVISED EQUIDISTANT* Total Stud.	%Neg.	*CAPACITY* Total Stud.	%Neg.	*TEDTAC* Total Stud.	%Neg.	*STOLEE* Total Stud.	%Neg.
Attucks	1359	89.7	1555	83.0	1827	60.9	1599	85.6
Black	1817	3.0	2248	2.0	2294	55.5	2366	27.8
Burbank	1727	12.3	1593	27.0	1825	28.6	1620	23.7
Cullen	2036	73.0	1819	64.0	1749	48.0	2175	77.1
Deady	2402	5.7	2366	4.4	2338	5.3	2401	5.8
Dowling	1865	7.0	1697	7.0	1589	3.4	2336	19.5
Edison	1444	8.9	1305	0	1418	13.3	1454	13.7
Fleming	1069	73.2	952	79.0	971	45.1	1068	49.9
Fondren	1805	1.2	1873	1.0	2021	2.8	1832	0
Fonville	1458	9.7	1294	22.0	1661	18.2	1485	21.1
Furr	1150	64.0	1448	45.0	975	36.0[2]	1192	39.4
Hamilton	1455	17.1	1733	17.0	1843	8.8	1959	32.7
Hartman	2344	5.2	1723	2.0	2627	5.1	2400	18.5
Henry	1224	.3	1177	.3	1556	34.2[3]	1622	16.1
Hogg	988	5.8	1315	12.0	1150	14.2	1310	14.2
Jackson	1353	2.8	1603	7.0	1779	38.2	1528	43.7
Johnston	2506	0	2281	2.0	2868	0	2723	1.2
Key	2140	85.6	1816	84.0	2511	75.2	2229	64.3
Lanier	1504	.6	1252	2.0	1468	19.7	1589	5.8
Lincoln	662	38.0	575	72.0	662	44.3[2]	1101	59.6
Long	1598	3.4	1354	.1	1660	0	1526	0
Marshall	1587	23.9	1707	20.0	1616	44.6	1846	39.7
McReynolds	1758	24.6	1936	26.0	1942	49.5	2202	41.6
Miller	838	80.0	1159	79.0	1245	84.9	1224	82.4
Pershing	1738	0	2016	0	2257	0	2119	0
Rogers	1403	0	1908	2.5	1973	.1	1903	0
Ryan	1884	94.5	1808	88.0	1882	82.0	1746	77.7
Scarbrough	1058	1.4	815	0	1058	0	1149	2.6
Sharpstown	2037	5.0	2372	4.0	796	18.9[2]	2573	7.8
Smith, E. O.	1699	87.0	1952	85.0	2017	73.2	2088	87.3

Terrell	983	81.8	859	78.5	854[4]	35.9	915	67.0
Thomas	1687	41.0	1904	44.6	2024	24.4	2325	29.7
Washington B. T.	1049	84.9	964	60.0	1232	52.5[2]		[5]
Washington G.	1075	28.9	1058	24.0	1036	8.4	995	29.9
Williams	736	76.6	649	61.0		[6]	1208	36.8
Woodson	1627	88.0	1525	80.0	1887	87.3	1537	54.5

---

[1] From Gov. Ex. 104.

[2] Stolee combined statistics for Junior - Senior High. Students allocated 50% each to Junior and Senior High.

[3] Paired Grades 8 and 9 with Terrell.

[4] Paired Grade 7 with Henry.

[5] Recommended B. T. Washington be converted to Senior High School.

[6] Recommended Williams be converted to Senior High School.

ELEMENTARY SCHOOL

% Negro	*Equidistant*	*Capacity*	*Tedtac*[1]
0-10	92	94	51
10.1-20	10	6	7
20.1-30	5	4	6
30.1-40	4	6	37
40.1-50	2	4	44
50.1-60	8	4	9
60.1-70	1	6	2
70.1-80	13	9	3
80.1-90	8	12	4
90.1-100	27	25	7
	170	170	170

[1] Alternative No. 1, completed with statistics from defendants Geographic Capacity Plan for schools for which statistics were not previously given.

ELEMENTARY SCHOOL

% Negro	*Equidistant*		*Capacity*		*Tedtac*[1]	
	N	W	N	W	N	W
0-10	905	73480	1056	79208	529	44906
10.1-20	1101	6423	508	2854	564	3251
20.1-30	661	2131	615	1683	845	2745
30.1-40	1043	1797	1523	2586	9035	15980
40.1-50	1450	1800	1239	1408	17655	21405
50.1-60	3549	2730	2317	1557	3756	3432
60.1-70	542	250	2583	2403	934	601
70.1-80	9255	2893	5844	1699	2130	620
80.1-90	6930	902	10651	1542	3382	501
90.1-100	20522	802	21559	681	6665	237
TOTAL	46,048	93,208	47,895	95,591	45,495	93,678

[1] Alternative No. 1, completed with statistics from defendants Geographic Capacity Plan for schools for which statistics were not previously given.

EQUI-DISTANT PLAN

(1) Black students attending schools not included in the "90.1 - 100%" black student range

Senior High:	8,702	of	8,702	or	100%
Junior High:	15,430	of	17,211	or	89%
Elementary:	25,526	of	46,048	or	55%
Total:	49,658	of	71,961	or	68%

(2) Number of schools in the "90.1 - 100%" black student range

Senior High:	0
Junior High:	1
Elementary:	27

GEOGRAPHIC CAPACITY PLAN

(1) Black students attending schools not in the 90.1 - 100%" black student range

Senior High:	10,087	of	10,087	or	100%
Junior High:	16,675	of	16,675	or	100%
Elementary:	26,336	of	47,895	or	54%
Total:	53,098	of	74,657	or	71%

(2) Number of schools in the "90.1 - 100%" black student range

Senior High:	0
Junior High:	0
Elementary:	25

HOUSTON INDEPENDENT SCHOOL DISTRICT

GEOGRAPHIC CAPACITY PLAN

Senior High School	*Negro*	*White*	*Unknown*	*Total*
Austin	393	1517	28	1938
Bellaire	1	1551	1101	2653
Bellaire Relief	17	1493	359	1869
Davis	319	1079	21	1419
Furr	534	438	5	977
Houston, Sam	397	2907	39	3343
Jones, J.	241	1490	70	1801
Kashmere	1448	286	19	1753
Lamar	62	1854	205	2121
Lee	84	2033	40	2157
Lincoln	332	416	5	753
Madison	58	1561	113	1732
Milby	26	1653	51	1730
Reagan	512	1406	14	1932
Scarborough	29	698	3	730
Sterling	385	1345	132	1862
Waltrip	141	2427	11	2579
Washington, B. T.	410	288	2	700
Westbury	0	1416	179	1595
Wheatley	1154	946	24	2124
Williams	458	194	41	693
Worthing	981	329	674	1984
Yates	1773	359	108	2240
Total	9,755	27,686	3,244	40,685

HOUSTON INDEPENDENT SCHOOL DISTRICT

GEOGRAPHIC CAPACITY PLAN

Junior High School	*Negro*	*White*	*Unknown*	*Total*
Attucks	1285	237	33	1555
Black	52	2178	18	2248
Burbank	425	1120	48	1593
Cullen	1159	554	106	1819
Deady	105	2185	76	2366
Dowling	120	1545	32	1697
Edison	0	1302	3	1305
Fleming	749	174	29	952
Fondren	21	1680	172	1873
Fonville	283	934	77	1294
Furr	658	747	44	1449
Hamilton	293	1275	165	1733
Hartman	27	1639	57	1723
Henry	4	1156	17	1177
Hogg	152	1108	55	1315
Jackson	121	1470	12	1603
Johnston	0	2240	41	2281
Key	1529	260	27	1816
Lanier	30	1201	21	1252
Lincoln	417	154	4	575
Long	1	1326	27	1354
Marshall	346	1336	25	1707
McReynolds	507	1386	43	1936
Miller, W. E.	920	221	18	1159
Pershing	0	1955	61	2016
Rogers	49	1852	7	1908
Ryan	1588	189	31	1808
Scarborough	0	805	10	815
Sharpstown	90	2191	91	2372
Smith, E. O.	1664	257	31	1952
Terrell	675	167	17	859
Thomas	851	982	71	1904

HOUSTON INDEPENDENT SCHOOL DISTRICT

GEOGRAPHIC CAPACITY PLAN

Junior High School	*Negro*	*White*	*Unknown*	*Total*
Washington, B. T.	582	362	20	964
Washington, G.	252	787	19	1058
Williams	393	229	27	649
Woodson	1227	223	75	1525
Total	16,575	37,427	1,610	55,612

HOUSTON INDEPENDENT SCHOOL DISTRICT

GEOGRAPHIC CAPACITY PLAN

Elementary School	*Negro*	*White*	*Unknown*	*Total*
Alamo	1	354	1	356
Alcott	504	645	83	1232
Allen	280	476	7	763
Almeda	28	527	11	566
Anderson	0	1273	86	1359
Atherton	1119	11	0	1130
Barrick	1	1071	16	1088
Bastian	892	242	38	1172
Benbrook	0	1040	5	1045
Berry	471	492	16	979
Blackshear	1673	11	43	1727
Bonham	1	1080	26	1107
Bonner	0	927	0	927
Bowie	719	261	3	983
Braeburn	2	682	13	697
Briargrove	0	994	12	1006
Briscoe	1	661	7	669
Brock	270	126	3	399
Brookline	0	662	4	666
Browning	2	486	10	498
Bruce	812	244	26	1082
Burbank	0	1256	25	1281
Burnet	0	1270	16	1286
Burrus	1069	113	0	1182
Cage	0	285	3	288
Carnegie	780	1	6	787
Chatham	739	172	7	918
Cleveland	150	271	3	424
Clinton Park	365	1	3	369
Concord	566	143	6	715
Condit	0	712	6	718
Cooley	91	524	13	628
Coop	12	1585	9	1606
Cornelius	0	773	1	774

HOUSTON INDEPENDENT SCHOOL DISTRICT

GEOGRAPHIC CAPACITY PLAN

Elementary School	*Negro*	*White*	*Unknown*	*Total*
Crawford	350	29	5	384
Crockett	113	249	2	364
Cunningham	1	766	11	778
De Chaumes	0	983	7	990
De Zavala	6	996	46	1048
Dodson	1018	83	21	1122
Dogan	1285	70	4	1359
Douglass	1057	2	18	1077
Dow	44	448	1	493
Dunbar	678	57	11	746
Durham	2	651	15	668
Durkee	0	1297	40	1337
Easter	832	185	10	1077
Eighth Avenue	393	213	10	616
Eliot	52	1417	3	1472
Elrod	33	1290	6	1329
Emerson	77	880	3	960
Fairchild	836	170	22	1028
Fannin	90	264	7	361
Field	0	560	6	566
Foerster	20	926	17	963
Fondren	0	595	5	600
Foster	1143	53	114	1310
Franklin	0	1670	3	1673
Frost	652	450	10	1112
Garden Oaks	131	626	18	775
Garden Villas	0	842	40	882
Golfcrest	1	575	2	578
Gordon	0	425	3	428
Grady	0	607	1	608
Gregg	0	490	0	490
Gregory	749	195	11	955
Grimes	822	158	6	986
Grissom	87	1325	11	1423

HOUSTON INDEPENDENT SCHOOL DISTRICT

GEOGRAPHIC CAPACITY PLAN

Elementary School	*Negro*	*White*	*Unknown*	*Total*
Harper	297	182	6	485
Harris, J. R.	121	1386	15	1522
Harris, R. P.	0	320	22	342
Hartsfield	638	295	77	1010
Harvard	5	776	12	793
Helms	99	412	6	517
Henderson, J. P.	7	912	12	931
Henderson, N. Q.	646	0	4	650
Herod	0	1151	1	1152
Highland Hts.	474	205	11	690
Hobby	55	1113	30	1198
Hohl	24	712	8	744
Holden	456	269	3	728
Horn	1	844	4	849
Houston Gardens	752	233	4	989
Isaacs	898	162	1	1061
Janowski	1	764	8	773
Jefferson	0	808	10	818
Jones, A	5	428	2	435
Jones, J. W.	557	50	13	620
Kashmere Gardens	887	22	15	924
Kay	173	173	4	350
Kelso	531	810	15	1356
Kennedy	778	17	1	796
Kolter	2	980	9	991
Lamar	30	923	12	965
Langston	874	21	14	909
Lantrip	4	872	15	891
Law	829	149	9	987
Lee	24	453	9	486
Lewis	1	616	2	619
Lockhart	682	85	15	782
Longfellow	4	597	41	642
Looscan	171	342	7	520

HOUSTON INDEPENDENT SCHOOL DISTRICT

GEOGRAPHIC CAPACITY PLAN

Elementary School	*Negro*	*White*	*Unknown*	*Total*
Love	102	238	7	347
Lovett	0	376	13	389
MacArthur	661	161	63	885
MacGregor	666	50	31	747
Mading	829	559	16	1404
McDade	1188	117	16	1321
Memorial	50	497	6	553
Milam	47	300	0	347
Miller, D.	91	98	6	195
Mitchell	0	659	52	711
Montgomery	14	1287	27	1328
Montrose	1	356	9	366
Neff	0	1470	18	1488
Northline	0	913	12	925
Oak Forest	0	1088	6	1094
Oates	59	591	5	655
Osborne	820	44	24	888
Parker	0	1397	2	1399
Park Place	0	688	2	690
Patterson	0	665	4	669
Peck	405	116	5	526
Petersen	240	663	11	914
Pilgrim	0	584	19	603
Piney Point	288	104	1	393
Pleasants	769	0	11	780
Pleasantville	880	0	0	880
Poe	0	559	5	564
Port Houston	4	536	4	544
Pugh	4	1041	0	1045
Red	0	1142	5	1147
Reynolds	1225	0	1	1226
Rhoads	883	2	8	893
Richmond	0	914	0	914
River Oaks	10	642	25	677

HOUSTON INDEPENDENT SCHOOL DISTRICT

GEOGRAPHIC CAPACITY PLAN

Elementary School	*Negro*	*White*	*Unknown*	*Total*
Roberts	0	542	7	549
Rogers	0	565	17	582
Roosevelt	3	398	5	406
Ross	251	9	5	265
Rucker	0	1100	1	1101
Rusk	278	438	3	719
Ryan	415	278	1	694
Sanderson	863	26	2	891
Scarborough	0	1091	21	1112
Scott	838	79	0	917
Scroggins	76	639	1	716
Shearn	0	617	34	651
Sherman	120	1114	2	1236
Sinclair	0	933	18	951
Smith, K.	79	1281	16	1376
Southland	674	134	20	828
Southmayd	1	1023	241	1265
Stevens	0	1068	13	1081
Stevenson	35	539	1	575
Sunnyside	1231	8	30	1269
Sutton	1	1566	26	1593
Travis	0	523	2	525
Turner	1220	75	22	1317
Twain	0	690	22	712
Wainwright	35	812	6	853
Walnut Bend	0	1510	19	1529
Wesley	421	270	46	737
W. University	0	1042	7	1049
Wharton	183	518	19	720
Whidby	735	57	31	823
White	0	923	2	925
Whittier	0	647	2	649
Wilson	64	353	42	459
Windsor Village	40	896	38	974

HOUSTON INDEPENDENT SCHOOL DISTRICT

EQUI-DISTANT PLAN

Senior High School	*Negro*	*White*	*Unknown*	*Total*
Austin	109	1476	13	1598
Bellaire	0	1873	1270	3143
Bellaire Relief	7	1757	143	1907
Davis	544	1045	32	1621
Furr	397	555	3	955
Houston, Sam	148	3016	35	3199
Jones, J.	585	1008	87	1680
Kashmere	1603	254	18	1875
Lamar	29	1825	244	2098
Lee	78	1599	63	1740
Lincoln	342	420	10	772
Madison	46	939	23	1008
Milby	139	2328	50	2517
Reagan	189	1493	16	1698
San Jacinto	379	214	11	604
Scarborough	30	693	3	726
Sterling	196	1424	52	1672
Waltrip	79	1843	8	1930
Washington, B. T.	553	252	1	806
Westbury	19	2061	243	2323
Wheatley	314	920	14	1248
Williams	460	235	40	735
Worthing	1228	94	774	2096
Yates	1228	155	46	1429
Total	8,702	27,479	3,199	39,380

HOUSTON INDEPENDENT SCHOOL DISTRICT

EQUI-DISTANT PLAN

Junior High School	*Negro*	*White*	*Unknown*	*Total*
Attucks	1219	123	17	1359
Black	55	1753	9	1817
Burbank	213	1474	40	1727
Cullen	1491	445	100	2036
Deady	139	2182	81	2402
Dowling	131	1709	25	1865
Edison	129	1312	3	1444
Fleming	782	268	19	1069
Fondren	22	1538	245	1805
Fonville	141	1228	89	1458
Furr	739	380	31	1150
Hamilton	249	1144	62	1455
Hartman	121	2081	142	2344
Henry	4	1201	19	1224
Hogg	57	897	34	988
Jackson	38	1312	3	1353
Johnston	1	2410	95	2506
Key	1832	261	47	2140
Lanier	9	1494	31	1534
Lincoln	252	405	5	662
Long	54	1500	44	1598
Marshall	379	1182	26	1587
McReynolds	432	1285	41	1758
Miller	670	161	7	838
Pershing	0	1693	45	1738
Rogers	0	1394	9	1403
Ryan	1781	93	10	1884
Scarborough	15	1037	6	1058
Sharpstown	98	1912	27	2037
Smith, E. O.	1470	192	37	1699
Terrell	804	168	11	983
Thomas	692	944	51	1687

HOUSTON INDEPENDENT SCHOOL DISTRICT

EQUI-DISTANT PLAN

Junior High School	*Negro*	*White*	*Unknown*	*Total*
Washington, B. T.	891	149	9	1049
Washington, G.	311	743	21	1075
Williams	564	169	3	736
Woodson	1426	105	96	1627
Total	17,211	36,344	1,540	55,095

HOUSTON INDEPENDENT SCHOOL DISTRICT

EQUI-DISTANT PLAN

Elementary School	*Negro*	*White*	*Unknown*	*Total*
Alamo	87	339	4	430
Alcott	712	754	71	1537
Allen	83	416	2	501
Almeda	27	291	6	324
Anderson	25	1736	51	1812
Atherton	843	6	0	849
Barrick	0	1088	23	1111
Bastian	899	249	3	1151
Benbrook	0	798	1	799
Berry	144	857	17	1018
Blackshear	1343	11	44	1398
Bonham	0	991	36	1027
Bonner	0	937	0	937
Bowie	809	191	1	1001
Braeburn	0	769	16	785
Briargrove	0	803	11	814
Briscoe	0	506	3	509
Brock	271	152	3	426
Brookline	0	958	2	960
Browning	0	458	10	468
Bruce	446	4	33	483
Burbank	0	806	16	822
Burnet	0	1238	14	1252
Burrus	1027	106	0	1133
Cage	1	280	2	283
Carnegie	806	1	4	811
Chatham	962	366	5	1333
Cleveland	49	325	22	396
Clinton Park	388	1	2	391
Concord	641	66	2	709
Condit	0	779	9	788
Cooley	0	389	6	395
Coop	3	827	2	832
Cornelius	0	703	0	703

HOUSTON INDEPENDENT SCHOOL DISTRICT

EQUI-DISTANT PLAN

Elementary School	*Negro*	*White*	*Unknown*	*Total*
Crawford	655	13	11	679
Crockett	68	330	1	399
Cunningham	0	503	3	506
DeChaumes	0	981	5	986
DeZavala	1	904	4	909
Dodson	1336	28	23	1387
Dogan	702	75	0	777
Douglass	737	0	12	749
Dow	334	331	1	666
Dunbar	293	52	7	352
Durham	2	640	16	658
Durkee	0	1311	38	1349
Easter	912	222	8	1142
Eighth Avenue	502	167	9	678
Eliot	892	640	4	1536
Elrod	38	1312	5	1355
Emerson	188	880	4	1072
Fairchild	1329	178	44	1551
Fannin	11	141	15	167
Field	2	605	8	615
Foerster	9	790	11	810
Fondren	0	227	1	228
Foster	1084	28	111	1223
Franklin	7	1491	46	1544
Frost	558	465	12	1035
Garden Oaks	0	283	19	302
Garden Villas	0	693	20	713
Golfcrest	0	553	0	553
Gordon	0	455	3	458
Grady	0	525	1	526
Gregg	0	624	2	626
Gregory	847	334	10	1191
Grimes	762	144	6	912
Grissom	87	1210	10	1307

HOUSTON INDEPENDENT SCHOOL DISTRICT
EQUI-DISTANT PLAN

Elementary School	*Negro*	*White*	*Unknown*	*Total*
Harper	296	245	5	546
Harris, J. R.	187	1093	15	1295
Harris, R. P.	5	384	23	412
Hartsfield	542	250	58	850
Harvard	8	313	7	328
Helms	172	305	3	480
Henderson, J. P.	7	590	9	606
Henderson, N. Q.	570	0	3	573
Herod	0	1049	6	1055
Highland Hts.	365	141	4	510
Hobby	95	916	22	1033
Hohl	13	843	9	865
Holden	488	586	6	1080
Horn	0	846	3	849
Houston Gardens	591	146	2	739
Isaacs	790	240	3	1033
Janowski	0	688	8	696
Jefferson	22	634	11	667
Jones, Anson	251	403	2	656
Jones, J. W.	632	54	15	701
Kashmere Gardens	756	12	9	777
Kay	102	268	0	370
Kelso	404	729	16	1149
Kennedy	908	113	10	1031
Kolter	0	705	10	715
Lamar	30	994	3	1027
Langston	956	11	11	978
Lantrip	16	900	15	931
Law	559	198	7	764
Lee	49	367	2	418
Lewis	0	692	10	702
Lockhart	764	177	16	957
Longfellow	2	545	35	582
Looscan	27	643	0	670
Love	42	381	11	434

HOUSTON INDEPENDENT SCHOOL DISTRICT

EQUI-DISTANT PLAN

Elementary School	*Negro*	*White*	*Unknown*	*Total*
Lovett	0	585	14	599
MacArthur	704	213	49	966
MacGregor	579	56	32	667
Mading	602	509	14	1125
McDade	1426	162	13	1601
Memorial	6	198	3	207
Milam	213	274	0	487
Miller, D.	137	186	8	331
Mitchell	0	644	47	691
Montgomery	11	1584	32	1627
Montrose	1	195	5	201
Neff	0	1479	20	1499
Northline	0	898	16	914
Oak Forest	3	1404	9	1416
Oates	114	553	2	669
Osborne	649	243	19	911
Parker	0	1197	5	1202
Park Place	0	785	6	791
Patterson	0	665	3	668
Peck	216	360	2	578
Petersen	199	625	18	842
Pilgrim	0	723	16	739
Piney Point	125	443	11	579
Pleasants	530	0	6	536
Pleasantville	977	0	0	977
Poe	0	570	5	575
Port Houston	66	580	1	647
Pugh	86	935	0	1021
Red	0	1346	10	1356
Reynolds	326	12	0	338
Rhoads	962	21	4	987
Richmond	0	848	3	851
River Oaks	3	465	19	487
Roberts	0	467	9	476

HOUSTON INDEPENDENT SCHOOL DISTRICT

EQUI-DISTANT PLAN

Elementary School	*Negro*	*White*	*Unknown*	*Total*
Rogers	8	712	9	729
Roosevelt	148	456	6	610
Ross	735	64	7	806
Rucker	0	1077	1	1078
Rusk	53	715	3	771
Ryan	586	388	4	978
Sanderson	893	82	0	975
Scarborough	0	1122	14	1136
Scott	964	74	3	1041
Scroggins	32	790	3	825
Shearn	0	666	40	706
Sherman	153	1022	1	1176
Sinclair	57	823	25	905
Smith, K.	76	1127	15	1218
Southland	711	197	30	938
Southmayd	8	1181	29	1218
Stevens	3	1137	16	1156
Stevenson	0	699	4	703
Sunnyside	712	15	18	745
Sutton	0	969	4	973
Travis	2	645	11	658
Turner	1049	25	15	1089
Twain	0	689	19	708
Wainwright	34	987	9	1030
Walnut Bend	14	1614	7	1635
Wesley	648	91	65	804
West University	0	1214	10	224
Wharton	0	485	7	492
Whidby	628	8	37	673
White	0	996	5	1001
Whittier	0	790	4	794
Wilson	8	447	40	495
Windsor Village	20	879	39	938

APPENDIX C

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

NO. 30,080

DELORES ROSS, ET AL.,
Plaintiffs-Appellants

UNITED STATES OF AMERICA
Plaintiff-Intervenor-Appellant

v.

ROBERT Y. ECKELS, ETC., ET AL.,
Defendants-Appellees

Appeal from the United States District Court for the Southern District of Texas

(August 25, 1970)

Before THORNBERRY, MORGAN and CLARK, Circuit Judges.

PER CURIAM:

This school desegregation case concerns the proper method for unitizing the composition of student bodies in the schools operated by the Houston Independent School District.[1]

---

1. Under the stringent requirements of *Alexander v. Holmes County Board of Education*, supra, which this court has carried out in *United States v. Hinds County School Board*, 5 Cir., 1969, 417 F.2d 852 [Nos. 28030, 28042, Nov. 7, 1969], this court has judicially determined that the ordinary procedures for appellate review in school segregation cases have to be suitably adapted to assure that each system, whose case is before us, "begin immediately to operate as unitary school systems." Upon consideration of the record, the court has proceeded to dispose of this case as an extraordinary matter. Rule 2, FRAP.

DESCRIPTION

The Houston Independent School District is the sixth largest school district in the United States in terms of pupil enrollment, having approximately 235,000 students. The district meanders along, inside and outside the city limits of Houston, Texas. It contains 230 schools located on 225 campuses. With minor special exceptions, each school contains one of three basic grade structures—elementary, encompassing Kindergarten or 1st grade through 6th grade —junior high, containing grades 7 through 9—or senior high, composed of grades 10 through 12. During the 1969-70 school year, the district employed 8,994 teachers, 2,882 of whom were Negroes. The student demographic information developed in this record is less than crystal clear, but the latest figures submitted by the school district, which should be the most reliable index, show a pupil enrollment of 71,961 Negroes, 157,031 whites, and 6,888 pupils whose race is unknown. The United States estimates that there are approximately 36,000 students in the system who are Spanish surnamed Americans who are statistically included within the white enumeration figures.

Typical of urban school districts nationwide, extensive patterns of racially segregated housing exist within this district. The areas of all or predominantly Negro residences extend from the center of the city in a southerly direction to the county line, from the center of the city northeast to the district boundary, and in an area along and west of I-45 North. With the exception of one relatively small area in the far western portion of the district, the west half, the north central and the southeast portions of the district contain all or substantially all white residents. The only figures reflecting residential pat-

terns for Spanish surnamed Americans are the reporting forms covering the Fall 1969 school survey required under Title VI of the Civil Rights Act of 1964. These reports show that the heaviest residential concentrations of this ethnic group are located in the north central and northeastern portion of the city. In most instances these neighborhoods are adjacent to neighborhoods which are inhabited predominantly by Negroes.

Almost the entirety of the Spring Branch and the Northeast Houston School Districts are located within the city limits of the City of Houston but outside of the district limits of the Houston Independent School District. Substantial portions of the Cypress-Fairbanks and Pasadena School District are similarly located within the city but outside the school district. The district and the city are bordered by four other independent school districts—Alief, Katy, Aldine and Galena Park; and the district, city and county adjoin school districts in Ft. Bend and Brazoria Counties. In all, there are 22 separate school districts in Harris County. The City and Houston School District limits include some separately incorporated municipalities which are served by the District.[2]

JUDICIAL HISTORY

The district has been in litigation on matters involving racial integration at various times since December 26,

---

2. These comments as to the location of adjacent districts and governmental subdivisions are included only to demonstrate the complexity of residential and governmental boundaries to be dealt with. No point is made here of the constitutional dimensions of problems presented by racial distinctions resulting from the shape and relationship of artificial geographic boundaries of counties, municipalities and school districts. *See* Brunson v. Bd. of Tr. School Dist. #1, Clarendon County, S.C. _____F.2d_____ (4th Cir. en banc 1970) [No. 14571, June 5, 1970].

1956. Prior to court interdiction the district operated a traditional dual school system with both student bodies and faculties segregated by race into all-Negro and all-white components by means of overlapping racially segregated attendance zones. In 1960 the district court ordered implementation of a grade per year transfer plan which allowed voluntary transfers to the school maintained for the opposite race within the student's attendance zone. The desegregation process was originally scheduled to be completed in 1972.[3] In 1962 this Court reversed a district court order permitting a limited exception to the grade per year plan, which required elementary school children to attend the same school attended by their older brothers or sisters.[4] Although the timetable of additional grade coverage of the voluntary transfer plan was later accelerated, dual geographic attendance zones remained in effect under Court orders through the end of the 1966-67 school year.[5]

In 1966 a complaint was filed seeking to enjoin certain aspects of a 59,000,000 dollar school construction program on the ground that they were racially discriminatory. The complaint was dismissed and the dismissal was affirmed by this Court.[6]

On June 2, 1967, the United States was granted leave to intervene and on September 5, 1967 the district court

---

3. Ross v. Pres. of the Bd. of Tr. of the Houston Indep. School Dist., 5 Race Rel. Rep. 703 (S.D. Tex., 1960), *aff. sub nom* Houston Indep. School Dist. v. Ross, 282 F.2d 95 (5th Cir.), *stay and cert. denied* 364 U.S. 803, 81 S.Ct. 27, 5 L.Ed.2d 36 (1960).

4. Ross v. Dyer, 212 F.2d 191 (5th Cir. 1962).

5. *See* Ross v. Eckels, 11 Race Rel. Rep. 216 (S.D. Tex., 1965).

6. Broussard v. Houston Indep. School Dist., 395 F.2d 817 (5th Cir. 1968), *app. dism.* as moot and *reh. den.* 403 F.2d 34 (5th Cir. 1968).

promulgated a Jefferson County[7] type decree. Through the 1969-70 school year the district continued to be operated under this court order on a systemwide freedom of choice plan.

PAST RESULTS

The figures as of December 1969 showed that out of 170 elementary schools in the system, 95 had student bodies with 10% or fewer Negro students, while 44 schools had student bodies with 10% or fewer white students. At the junior high school level 19 of the system's 36 schools had student bodies with 10% or fewer Negro students and 11 schools had student bodies with 10% or fewer white students. Out of the 24 high schools in the district 12 had student bodies with 10% or fewer Negro students and 7 had student bodies with fewer than 10% white students. 77% of the Negro students in the entire system still attended schools that had student bodies composed of more than 90% Negroes.

PROPOSALS OF THE PARTIES

Seven plans to govern student body composition were proposed to the district court.

The Plaintiff's Plan

The following description is taken verbatim from the district court's opinion, which the parties agree is a fair summary.

> "[Plaintiffs'] plan is based upon the premise that the law requires that every school in the District shall

7. United States v. Jefferson Cty. Bd. of Educ., 380 F.2d 385 (5th Cir. en banc 1967).

have the same ratio of white to Negro students, as prevails throughout the District. For practical purposes plaintiffs' counsel concedes that some margin must be allowed, and suggests that this margin should be no more than 10% above or below. Thus every school would have a ratio of white to Negro students ranging from 57% white—43% Negro to 77% white —23% Negro.

"Further recognizing the realities of the situation, however, the computerized plan [of plaintiffs] does not go this far, by reason of the admittedly prohibitive costs involved. The plan as submitted would result in no school having a student body in excess of 50% Negro. In light of the geographical size of the District and the residential patterns which prevail, to accomplish this result would require the daily busing of an estimated 44,000 students, approximately 34,000 white and 10,000 Negro. The plan is designed to restrict the maximum haul to a distance of 10 miles from the home of any student, and as not to overtax the capacity of any given school."

The Stolee Plan

This plan was developed at the request of the United States by Dr. Michael J. Stolee, Director of the Florida School Desegregation Consulting Center. Because of the limitations of time and the unavailability of some pertinent facts, Dr. Stolee's ultimate recommendations were incomplete in several respects. The plan was presented more to demonstrate an approach to solving the problem rather than as a comprehensive solution. The plan included a combination of the principles of zoning, pairing and bussing. The zones were gerrymandered and pairing and bussing were utilized to increase the incidence of racial integration.

Zoning was used exclusively in senior high schools. The result was to eliminate the existing all-Negro high schools and all but one all-white high school. Except for this school, the white high school populations varied from 30 to 60%. Zoning was used with respect to junior high schools except for two which would be paired. The result was to eliminate every all-Negro junior high, but 3 all-white junior high facilities would remain. The white population of the remaining schools would vary from 50 to 70%. At the elementary level, 27 schools were to be zoned and 51 were to be paired. This required extensive bussing which was to be accomplished by having the children walk to the school nearest their home to board busses to the school they would ultimately attend. Dr. Stolee's plan did not detail how to achieve the elimination of 26 predominantly Negro elementary schools and a number of all and predominantly white elementary schools but merely made the general recommendation that additional district bussing capacity be acquired and utilized to eliminate this condition. The number of students to be bussed, transportation distances and expenses to the district do not appear in the evidence. Dr. Stolee also recommended that predominantly white Cage and predominantly Negro J. W. Jones elementary schools be closed.

The TEDTAC Plan

The Texas Educational Desegregation Technical Assistance Center (TEDTAC) is an agency funded by the Department of Health, Education and Welfare located at the University of Texas, which offers to assist parties interested in school desegregation. In July 1969 the school board was directed by the court to seek the assistance of

this agency in framing the proposals it was required to file by January 1, 1970. Some misunderstandings developed between the officials of this agency and the school district regarding consultation and cooperation in the development of the plan, with the result that the Board refused to endorse or sponsor the plan—but the government ultimately supported and urged it. It adopts the same general approach used by Dr. Stolee.

Zoning to maximize desegregation is used at all secondary school levels. TEDTAC recommended converting the Lincoln, Sharpstown and Williams Junior-Senior High School plant to Junior High Schools exclusively, and recommended that B. T. Washington Junior-Senior High School serve as a senior high school only.

A preference was stated for use of zoning at the elementary level but TEDTAC was unable to apply this technique specifically because current racially based pupil locator charts (dot maps) were not in existence and because such data as was then available was not complete. TEDTAC's secondary preference for elementary school desegregation was to use contiguous pairing of schools with emphasis upon achieving majority white schools to prevent white flight. TEDTAC also stated that cross-town bussing of elementary pupils should be used only as a last resort. However, after completion of its suggested pairing and zoning of elementary plants, 13 schools in the northeastern sector of Houston remained virtually all-Negro. The only alternative suggested to eliminate these schools was to pair them with some of the numerous remaining all-white schools in southwest Houston and to provide bussing via Loop 610 and the SW Freeway, a travel distance of approximately 16 miles. The

district court found the overall results of the TEDTAC plan would be as follows:

> "With respect to the high schools, there will be no all-Nego schools, and no all-white schools. There will be no high schools with less than 50 white students, and two with less than 50 Negro students. There will be no high schools with less than 100 white students, and two with less than 100 Negro students.
> "With respect to the junior high schools, it appears that there will be no all-Negro junior highs; four all-white junior highs. There will be no junior highs with less than 50 white students, and 6 with less than 50 Negro students. There will be no junior highs with less than 100 white students, and 7 with less than 100 Negro students.
>
> "With respect to the elementary schools, the results will be these. Two all-Negro elementary schools will remain, [as will] 24 all-white elementaries. There will be 6 elementary schools with less than 50 white students, and 47 with less than 50 Negro students. There will be 9 elementary schools with less than 100 white students, and 49 with less than 100 Negro students." [If cross-town bussing were eliminated the number of virtually all-Negro elementary schools would increase to 13.]

Freedom of Choice Plan

The previous school board recommended that freedom of choice be continued. The judge rejected this plan because of the low incidence of integration it had produced, as recited above.

Neighborhood Zoning

The 1969 school board also proposed a neighborhood zoning plan which incorporated an area contiguous

to each school formed by considerations of school capacity, hazardous crossings and natural barriers. The results were that no high school would remain all-Negro, two high schools would remain all-white; no junior high schools would be all-Negro, 5 would remain all-white; 4 of 170 elementary schools would remain all-Negro and 28 would enroll less than 50 white students, 52 elementary schools would remain all-white and 95 would have less than 50 Negro students.

The Geographic Capacity Zoning Plan

This plan was filed and urged by the school board which took office in 1970. It is based on the plan which this court mandated and put in operation in Bibb County, Georgia in Bivins v. Bibb County Bd. of Educ., ____ F.2d ____ (5th Cir. 1970) [No. 29121, February 5, 1970]. Under this plan a zone is drawn around each school, the size of which is determined by the capacity of the school, with boundaries shaped by traffic hazards and natural physical obstacles. Every student residing within the delineated zone must attend the school in that zone. Different zones are, of course, constructed for the entire elementary system, the entire junior high school system and the entire high school system. The results of this plan as applied to Houston with respect to the 24 high schools covered are that none would remain all-Negro, 1 would remain all-white; no high school will have a Negro population exceeding 90% and only 2 will exceed 70% Negro. With respect to the 36 junior high schools, none would remain all-Negro and only 4 would remain all-white; no junior high school will have a Negro population exceeding 90%. The system would retain 170 elementary schools—4 would remain all-Negro, and an

additional 25 schools would have Negro student populations exceeding 90%.

Equi-distant Zoning Plan

The 1970 school board also proposed a zoning plan which purported to follow the neighborhood school plan approved in *Ellis v. Bd. of Public Instruction of Orange County, Fla.*, 423 F.2d 203 (5 Cir., 1970). Within each grouping of schools—high school, junior high and elementary—zone lines were first drawn by engineers exactly equidistant between the adjacent schools. Then the capacity of the school was compared with the resultant student population included in each zone. Where it was found that the capacity of the school was exceeded, adjustments were made to narrow the boundaries of the zone but in every case the change was effected in a manner which would, if possible, increase racial integration within the zone. Finally, the geometric lines as adjusted were accommodated to city street patterns to avoid bisecting individual residences. Each student would be required to attend the school in his zone at the time of enrollment and to remain in that school for the ensuing semester regardless of a later change of residence. The only exception permitted was in the instance of voluntary transfers of students from schools where their race was in the majority to other schools in which their race was in the minority, with these exceptions:

> "(a) If such student chooses the nearest school in which his race is in the minority, he is afforded automatic admission despite the capacity of the school (i.e., he is permitted to 'bump' a student of the opposite race) and he is afforded free transportation from his home;

"(b) If such student prefers any other school in the District in which his race is in the minority, he may attend on a 'space available' basis, and if he furnishes his own transportation."

The predicted statistical results of this plan were as follows:[8]

At the high school level—

0—all-Negro student bodies

1—all-white student body

1—student body in excess of 90% Negro

10—student bodies in excess of 90% white

At the junior high school level—

0—all-Negro student bodies

2—all-white student bodies

3—student bodies in excess of 90% Negro

14—student bodies in excess of 90% white

---

8. The statistical summaries submitted by the various parties show some variances. We certainly agree with the district court that this was to be expected since the calculations were based upon eye count of 240,000 individual pupil locator dots, each about the size of the head of a pin. Since we are only dealing with projections and the discrepancies are slight, we do not regard this factor as crucial. However, the summaries of the parties do contain some calculations we cannot accept on the basis of information available here. For example, under this plan Worthing High School is shown to have a projected enrollment of 1228 Negro students, 94 whites and 774 unknown. Since it is surrounded by other preponderantly Negro junior and elementary schools, we are unwilling to consider this school as likely to have an enrollment that will be less than 90% Negro. The same is true for Attucks Junior High School with an enrollment that is 1219 Negro, 123 white and 17 unknown; Ryan Junior High School with 1781 Negro, 93 white and 10 unknown; and Woodson Junior High School with 1426 Negro, 105 white and 96 unknown. Our totals in the 90-100% Negro range for elementary schools coincide with those calculated by the parties. All of the following figures were reached by excluding all students whose race was unknown.

At the elementary school level—

4—all-Negro student bodies

51—all-white student bodies

23—other student bodies in excess of 90% Negro

41—other student bodies in excess of 90% white

The overall result of the plan was to leave—

4—all-Negro student bodies

54—all-white student bodies

27—other student bodies in excess of 90% Negro

65—other student bodies in excess of 90% white

38% of all Negroes in the district would attend schools with student bodies in excess of 90% Negro, while 75% of the white students in the district would attend schools with student bodies in excess of 90% white.

DISTRICT COURT ACTION

The district judge adopted the equidistant zoning plan. The opinion of the district court demonstrates that this case received learned, thorough, detailed consideration. The court analyzed the general geographic, student and teacher racial compositions of the Orange County, Florida, and the Houston Districts and found them to be legally comparable. It adjudicated the plan as applied in Houston to be fair and impartial in its resultant operation and that such racial segregation as did result was inherent in the city's residential patterns. In light of the other features incorporated in its order concerning teacher integration, majority to minority transfer privilege and precise faculty integration in all schools, the district court concluded that the equidistant zoning plan was a per-

missible means of achieving the conversion of the Houston Independent School District from a dual to a unitary system.[9]

---

9. The district court's reasoning was:

"I am of the view that the equidistant plan will best serve the needs of the student body, and will afford as uniformly a fair and non-discriminatory school assignment plan as well may be devised. In accepting this plan, I am mindful of the admonition contained in the *Ellis* opinion, and reiterated in *Andrews v. City of Monroe,* _____F.2d_____ (5 Cir., 1970), and in Singleton IV [*Singleton v. Jackson School District,* _____F.2d_____ (5 Cir., 1970)] that the *Ellis* neighborhood assignment plan is not necessarily the final answer for all large Southern school districts. It is not to be followed blindly. In my judgment, however, it not only creates a completely unitary system, but offers advantages not otherwise available.

"It will reduce travel to a minimum. It is non-discriminatory in all but one respect, namely, where changes have been made to accommodate school capacities, they have been made in such fashion as to increase integration. Every Negro child at the high school and junior high school level will receive his education in an integrated atmosphere.

"These children [in 4 remaining all-Negro schools], however, are not condemned to a segregated public school education. At worst, this condition will only continue through elementary school. At best, it may be corrected immediately, at the desire of any child so affected, who may transfer, and ride free of charge, to the nearest school in which his race is in the minority. Thus every Negro child has the opportunity for an integrated education today—the vast majority simply by attending the school nearest his home. Those elementary students who do not have it, and do not desire it today, will have it forced upon them at the junior high and high school levels. They will receive such education from a completely integrated faculty and staff.

"Under this equidistant proposal, every advantage of the neighborhood school is retained. The plan is economically and administratively sound. Additionally, the commands of *Brown I* and of *Alexander,* supra, are fully met. In its assignment policy, the School District will be as color-blind as it is possible to be, still achieving a high degree of integration; and no child will be effectively excluded from any school because of race."

APPLICABLE LEGAL STANDARDS

In the *Orange County* case, supra, we were careful to emphasize that, under the facts of that case, a neighborhood assignment system was adequate to convert the school from a dual to a unitary system. But in the same sentence we stated that, in the final analysis, each case had to be judged on all facts peculiar to the particular system. This is but another way of expressing what is implicit in every school decision and explicit in many in the present state of the law in this area—school cases are unique. Each school case must turn on its own facts. The rule was well stated in *Allen v. Board of Public Instruction of Broward County, Florida*, 5 Cir., 1970, ____F.2d ____ [No. 30032, slip opinion dated August __, 1970]:

> In the conversion from dual school systems based on race to unitary school systems, the continued existence of all-black or virtually all-black schools is unacceptable where reasonable alternatives exist.

MODIFICATIONS REQUIRED

The school board recommended a geographic capacity plan which the court acknowledged could have advantages over equidistant zoning.[10] At the senior and junior high

---

10. The court's comment was as follows:

"The geographic zoning plan offers an attractive solution. It offers a complete integration at both the high school and junior high school levels and a high incidence with respect to the elementary schools. It is not unnatural for the defendant District to take cognizance in its zoning plan of natural boundaries, traffic hazards, and other such considerations. As is pointed out in Ellis, supra, however, it is this very factor of discretion in the drawing of the line which renders such a plan suspect. No matter how high the integration factor under a plan drawn without strict guidelines, the contention can always be advanced that

school levels this plan was more effective and did in fact eliminate every all-Negro school and every school attended by more than 90% Negroes. We direct the court to adopt the portion of the geographic capacity plan applicable to these secondary schools.

On the other hand, as to the elementary schools, the equidistant neighborhood assignment plan adopted by the district court is an improvement over the geographic plan of the school board. The number of all—or virtually all—Negro student body schools under the so-called geographic assignment plan is 29 with a total of 25,848 Negro students assigned thereto. The number of such schools under the equidistant plan is 27 with a total of 21,418 students assigned thereto. Neither plan is acceptable.

We direct that the equidistant plan be used as a base for elementary school assignment but with the modifications hereinafter set out. These modifications which involve contiguous school zones are well within any reasonable definition of a neighborhood school system. See *Manning v. Board of Public Instruction of Hillsborough County*, 5 Cir., 1970, ___F.2d___ [No. 28,643, slip opinion dated May 11, 1970].

Modifications

Atherton	pair with Eliot and Scroggins
Bruce	pair with Anson Jones
Burrus	pair with Roosevelt
Crawford	pair with Sherman

such lines might have been drawn differently, and with a better result. In short, while I am convinced it is not the case in the present instance, whenever a School Board draws its zone lines today in a discretionary fashion, it is subject to being charged with doing so to continue the dual system."

Dodson	pair with Lantrip
J. W. Jones	pair with Fannin
N. Q. Henderson	pair with Pugh
Pleasantville	pair with Port Houston
Ross	pair with Ryan and Looscans
Rhoads	pair with Frost
Sanderson	pair with Easter and/or Chatham
MacGregor	rezone with Poe to desegregate MacGregor

These pairings leave 15 all- or virtually all-Negro elementary schools: Blackshear, Clinton Park, Carnegie, Douglass, Foster, Langston, Kashmere Gardens, Pleasants, Scott, Turner, Reynolds, Sunnyside, Whidby, Concord, and Dogan. The sum of the system from the standpoint of Negro student assignment is 11,982 left in virtually all-Negro elementary schools.

The district court is directed to implement the foregoing modifications as to the elementary school zones or alternatively the court may adopt any other plan submitted by the school board or other interested parties, provided, of course, that such alternate plan achieves at least the same degree of desegration as that reached by our modifications. See *Pate v. Dade County School Board*, 5 Cir., 1970, ____ F.2d ____ [Nos. 29,039 and 29,179, slip opinion dated August ____, 1970].

The district court also adopted a majority to minority transfer policy similar to that adopted by the Orange County Board of Education and approved by this court. Here again subsequent decisions have broadened the minimum requirements for that proviso. It must now be modified to provide that (a) all transferring students

shall be given transportation if they desire it and such transportation is available from district-controlled sources, (b) transferees must be given priority for space at any school to which they wish to transfer instead of just the nearest school.[11] *Allen v. Board of Public Instruction of Broward County,* supra; *Hightower v. West,* supra; *Carr v. Montgomery County Board of Education,* 5 Cir., 1970, ____ F.2d ____, [No. 29,521, slip opinion dated June 29, 1970]; *Davis v. Board of School Commissioners of Mobile,* 5 Cir., 1970, ____ F.2d ____, [No. 29,332, slip opinion dated June 8, 1970]; *Singleton v. Jackson Municipal Separate School District,* 5 Cir., 1970, ____ F.2d ____, [No. 29,226, slip opinion dated May 5, 1970]; *Taylor v. Ouachita Parish School Board,* 5 Cir., 1970, ___ F.2d ___, [No. 29,215, slip opinion dated April 13, 1970].

The directives of the decree of the district court here on appeal relative to the other five criteria we examine in cases of this type—faculty, staff, transportation, extra-curricular activities, and facilities—are correct.

The mandate in this cause shall issue forthwith; no stay will be granted pending petition for rehearing or application for writ of certiorari.

AFFIRMED in part, REVERSED in part, REMANDED with directions.

---

11. This priority provision, of course, applies only to transfer requests made prior to the beginning of each school term.

NO. 30080 - DELORES ROSS, et al. v. ROBERT Y. ECKELS, etc., et al. CLARK, Circuit Judge, dissenting:

With deference to my brothers, I must dissent. The plan selected by the District Court laid down a uniform rule requiring every student in the Houston Independent School District to attend the school closest to his home which had the physical capacity to accommodate him. I have no doubt this was and is the plan that held out the best chance to unify this school district. No one can dispute that with its majority to minority transfer rule and other complimenting requirements it was a plan under which no child was effectively excluded from any school on account of race or color. Since abuse of discretion is this Circuit's test for the validity of a District Court's school plan, Harvest v. Board of Public Instruction of Manatee County, Florida, ____F.2d____ (5 Cir., 1970) [29,425, June 28, 1970], I believe we err when we substitute our judgment, based upon documents and maps, for that of the District Court whose decision is based upon flesh and blood contact with the real people and actual problems of this District. See Carr v. Montgomery County Board of Education, ____F.2d____ (5 Cir., 1970) [No. 29,521, June 29, 1970].

Additionally, I would not reverse because the District Court relied upon valid precedent still viable in this Circuit, Ellis v. Board of Public Instruction of Orange County, Florida, 423 F.2d 203 (5 Cir., 1970). The District Court did not adopt the *Orange County* plan on the basis that it was some sort of talisman with universal therapeutic qualities for merging all school district student bodies. Rather, as the majority states, the

trial court analyzed the general geographic and student and teacher racial compositions of the Orange County and Houston Districts and found them to be legally comparable. Yet, the majority opinion rejects the use of this plan for Houston while it in no way demonstrates an efficient legal distinction between the Houston and Orange County School Districts. Certainly the mere fact that *Orange County* denominated the requirement that a child attend the school closest to his home as a neighborhood school system and the District Court in the case *sub judice* labeled the same plan and equi-distant zoning plan, is not controlling. That is the difference between tweedledum and tweedledee, which is no difference at all. Why can *Orange County* still exist as the law of this Circuit applicable to that county, to Tuscaloosa and Anniston, Alabama [See Lee v. Macon County, ____F.2d____, 5 Cir., 1970 [No. 29,584, July 14, 1970]], and to Fulton County, Georgia, a suburb of Atlanta [*See* Hightower v. West, ____F.2d____, 5 Cir., 1970 [No. 29,933, July 14, 1970], but not in Houston, Texas? I assert it is not, as the majority suggests, because of the continued existence of all Negro or virtually all Negro schools. The opinion in *Orange County* expressly states that it left three schools projected to have all Negro student bodies and it intimated that other Negro students would be attending other virtually all Negro schools. In Fulton County, *Hightower* stated it intended to leave one school all Negro, one school 98% Negro and two other schools in excess of 87% Negro. *See also* Mannings v. Board of Public Instruction of Hillsborough County, Florida, ____F.2d____, 5 Cir., 1970 [No. 28,643, May 11, 1970].

There is only one answer. It is rapidly becoming apparent that despite expressed disclaimers [*See* Singleton

v. Jackson Municipal Separate School District, ____F.2d ____, 5 Cir., 1970 [No. 29,226, August 12, 1970] [Footnote 5, slip opinion page 4]. The special school case panels of this Circuit are now out ahead of the requirements laid down by the Supreme Court and have adopted *sub silento* some unmentionable standard of numerical pupil racial balance to govern the affirmance or reversal of school case decisions.[1]

For the good of the schools and pupils of this Circuit, I for one do not understand why the "magic figures" must remain a mystery enshrouded in nebulous phrasing that says that the plan adopted is "ineffective" or "unacceptable".

The true principle that underlies the reversal of the District Court here is that the neighborhood school system ordered for Houston did not achieve that degree of racial balance some of the Judges of this Circuit have declared is "enough". We do nothing but delude ourselves when we adopt such a premise. Like chasing the pot of gold at the end of the rainbow, this reasoning embarks us on a course without an end. Unless someone would be boldly foolish enough to assert that the Courts can deprive school district patrons of their freedom, then it follows as the night follows the day that the Court will never finish litigating such "numbers game" cases.

I cannot conceive of a case more dramatically illustrative of the injustice of this rule than that presented by the case at bar. As the majority shows, there are areas within the city limits of Houston that are not included

---

1. The most recent of these opinions are collated in Allen v. Board of Public Instruction of Broward County, ____F.2d____, 5 Cir., 1970 [No. 30,032, August __, 1970].

within the boundaries of the school district. Is the equal protection clause of the Constitution too impotent to reach the all white "cut-glass" set in Spring Branch and the predominantly Negro area in Northeast Houston? Indeed, why would a document as all-pervasive as our Constitution allow the imaginary boundary lines of Pasadena or Galena Park (or even the contiguous all white Alief or Katy Districts) to thwart racial balance if that balance be constitutionally required?

Of more ominous portent is the type of partial racial balancing the majority opinion actually effects. Approximately 36,000 students in the Houston, Texas system are Spanish surnamed Americans. They have been adjudicated to be statistically white. As the majority states, we know they live in the very areas required to be paired with all or predominantly Negro schools. I say it is mock justice when we "force" the numbers by pairing disadvantaged students into schools with numbers of this equally disadvantaged ethnic group. *See* Cisneros v. Corpus Christi Independent School District, D.C.S.D. Texas, No. 68-C-95 (1970). I would be greatly surprised if a single school teacher could be found in the entire Houston Independent School District who would testify that the educational needs of either of these groups is advanced by such pairings. We seem to have forgotten that the equal protection right enforced is a right to education, not statistical integration. Why, on this kind of theory, we could end our problems by the simple expedient of requiring that in compiling statistics every student in every school be alternately white and Negro! Then, you see, everything would come out 50-50 and could get our seal of approval once and for all.

My views have not changed from those expressed by the dissents filed by Judge Coleman and myself in Singleton v. Jackson Municipal Separate School District, ___ F.2d___, (5 Cir., en banc, 1970) [No. 26,285, etc., January 21, 1970]. We still haven't given any affirmative help to school districts and trial courts. Surely the actual practical definition of a unitary school system should no longer be kept secret. Now is the time for this court to play "show and tell", while we still have viable school systems left to which we may apply our definition.

It also bears repeating that this District is not to blame. The Houston Independent School District has been under the injunctive mandate of the federal courts for more than the past 10 years and has never been shown to have violated our orders. Thus the fault to be fixed for any shortcomings of the District today squarely belongs to the federal courts and not the District, its staff or patrons.

The law in this field is entirely empirical. All must admit we are just beginning experimentations to find our way along an obscure path to the constitutional goal of a unitary school system—one in which no child shall be effectively excluded from any school on account of race or color. I predict that we shall soon discover in this as in other experimentation that a basic rule holds which requires ingredients and methods to be introduced singly, not in groups or bunches, lest the experiment continuously fail because one new departure cancelled out the benefits that came from another.

We should ever be mindful that the term "school case" is merely a fasciate for the collective bundle of separate rights belonging to the individual children, parents, teach-

ers and related community lives and activities that compose the sheaf which is a school district. If we prove nothing else, we will prove that the courts are totally inadequate as an institution to deal with such numerous and complex interrelationships of rights on a comprehensive basis. We delude ourselves when we attempt to adjust the rights of hundreds or thousands of citizens by remote control. In any event we ought to give those basic corrections we have already made, such as teacher racial balance, majority to minority transfer privileges, biracial committees and open housing and private employment discrimination decisions, a chance to function before we attempt to mandate student racial balancing.

Resignation to my fate as a dissenter cannot overcome my remorse for those whose rights our edicts trample in wholesale lots. I respectfully dissent.

LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
NOV 18 1970
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

October Term, 1970

NO. 982

HOUSTON INDEPENDENT SCHOOL DISTRICT, ET AL., *Petitioners,*

v.

UNITED STATES OF AMERICA, *Intervenor-Respondent,*

v.

DELORES ROSS, ET AL., *Plaintiffs-Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ERNEST H. CANNON
W. JAMES KRONZER
500 Houston First Savings Bldg.
711 Fannin Street
Houston, Texas 77002

Special Counsel for Petitioners in Desegregation Matters

Alpha Law Brief Co., M & M Bldg., Houston, Texas 77002

INDEX

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Constitutional Provisions Involved	3
Statement	3
Reasons for Granting the Writ	10
I. The Court of Appeals erred in ordering pairing on its own initiative merely to accomplish statistical integration	10
II. "Pairing" without proof is not a permissible substitute for contrary fact determinations by the trial Court	11
III. The "Equi-distant Plan" (or the alternatively presented "Geographic Capacity Plan") was the only complete plan and workable plan before the Court	14
Conclusion and Prayer	19
Certificate	21

TABLE OF AUTHORITIES

	Page
Bivins v. Bibb County Board of Education, 425 F.2d 1211 (5 Cir. 1970)	6
Carr v. Montgomery County Board of Education, 429 F.2d 382 (5 Cir. 1970) (No. 29,521, June 29, 1970)	13
Davis v. Board of School Commissioners of Mobile County, O. T. 1970, No. 436	10

Page

Ellis v. Orange County School District, 423 F. 2d 203 (5 Cir. 1970) 6

Harvest v. Board of Instruction of Manatee County, Fla., 429 F.2d 414 (5 Cir. 1970) 13

Singleton v. Jackson Municipal Separate School District, 430 F.2d 368 (5 Cir. 1970) 12

Swann v. Charlotte-Mecklenburg, O. T. 1970, Nos. 281, 349 10

Thomas v. West Baton Rouge Parish School Board, et al., 423 F.2d 1203 (5 Cir. 1970) 13

United States of America v. Board of Education of Webster County, Georgia, ____F.2d____ (5 Cir. 1970) (No. 29,769, July 7, 1970) 13

United States of America v. Jefferson County Board of Education, 372 F.2d 836 (5 Cir. 1966) 4

IN THE

Supreme Court of the United States

October Term, 1970

NO._____

HOUSTON INDEPENDENT SCHOOL DISTRICT, ET AL., *Petitioners,*

v.

UNITED STATES OF AMERICA, *Intervenor-Respondent,*

v.

DELORES ROSS, ET AL., *Plaintiffs-Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled case on August 25, 1970.

OPINIONS BELOW[1]

The opinions of the courts below directly preceding this are as follows:

1. Transcribed bench remarks of Honorable Ben C. Connally, District Judge of July 23, 1969, following the evidentiary hearing of July 14-23, 1969 [unpublished] (Appendix A);
2. Memorandum and order of District Court of May 30, 1970 [as yet unpublished] (Appendix B);
3. Opinion of Court of Appeals of August 25, 1970 [as yet unpublished] (Appendix C).

JURISDICTION

The judgment of the Court of Appeals was entered on August 25, 1970. No motions for rehearing were presented by any party. The jurisdiction of the Court is invoked under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

1. Whether, in this school desegregation case involving the nation's sixth largest school district and the largest yet to be brought under a federal court order, the Court of Appeals erred in ordering racial assignments resulting in the pairing of certain elementary schools merely to achieve statistical integration.

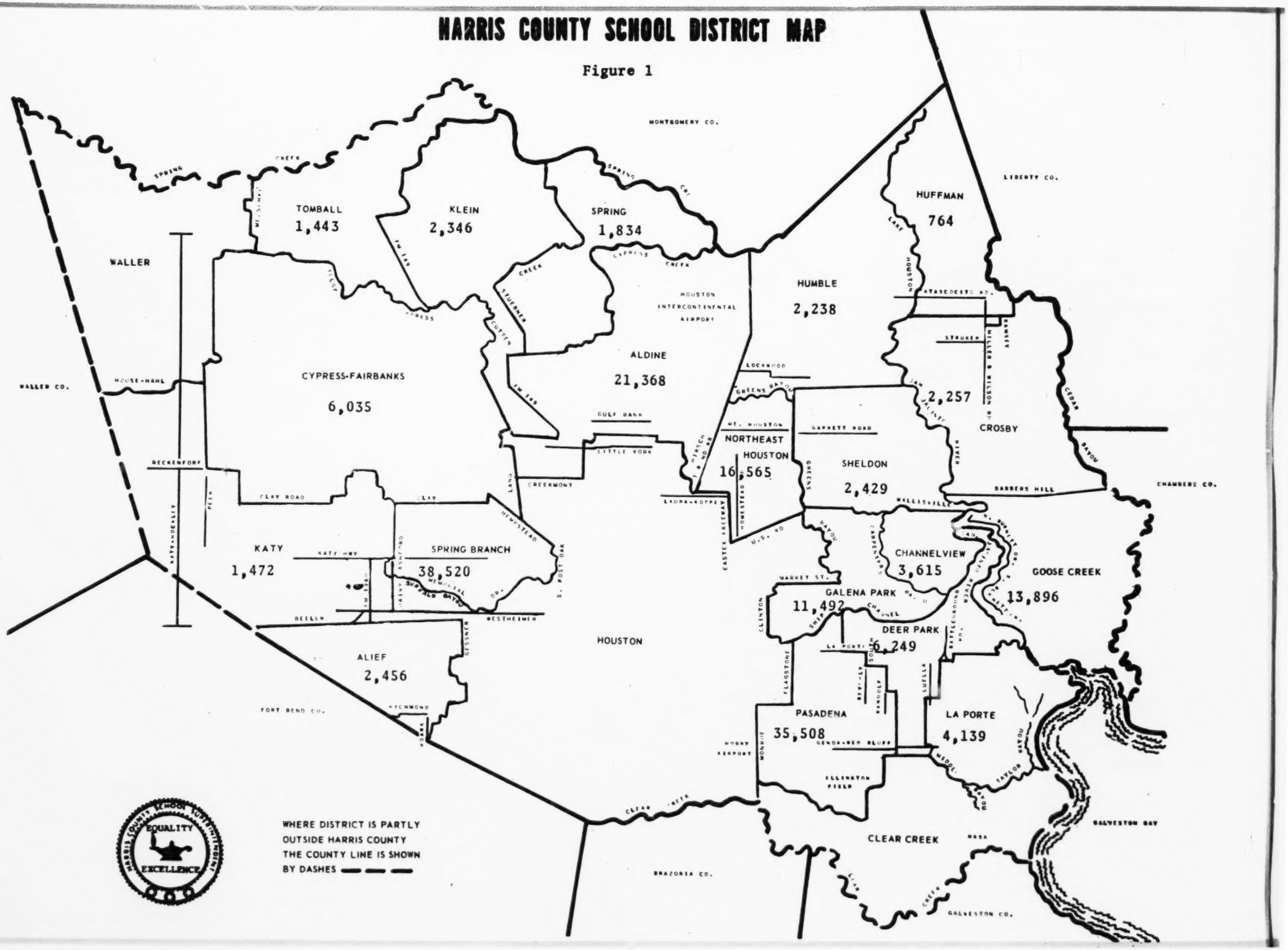
2. Whether "pairing" of schools is appropriate without any expert proof or hearing as to the nature of the desegregation accomplished, the extent of desegregation, and the effect of desegregation from an administrative and educational standpoint.

---

1. Because they are voluminous the appendix of opinions is printed separately.

HARRIS COUNTY SCHOOL DISTRICT MAP

Figure 1



3. Whether the Court of Appeals erred in partially rejecting the finding of the District Court adopting an "Equidistant Plan," patterned after the decision of the same Court in *Ellis v. Board of Education of Orange County, Florida,* 423 F.2d 203 (February 17, 1970), as urged in the dissenting Opinion.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

STATEMENT

The Houston Independent School District is the sixth largest school system in the United States. The student enrollment in the 1969-70 school year was 241,154, of which almost two-thirds were white and one-third black. Of this number of "white" scholastics approximately thirty-six thousand (36,000) were Spanish surnamed Americans. (See Dissenting Opinion of Judge Clark, Appendix C.) These Spanish surnamed American scholastics have been historically considered as Caucasian or white in the District, a fact heretofore recognized by all parties to this cause.

The District covers approximately 311 square miles, and its boundaries generally coincide with the City Limits of Houston. There are nineteen (19) other independent school districts within Harris County, Texas with an approximate enrollment of one hundred and seventy-five thousand (175,000) students. (See figure 1) As can be seen from the location of the other school districts, many of the centers of such districts are closer to the downtown Houston area than portions of the Houston District itself.

On September 5, 1967, the District Court, following a hearing, ordered the Houston District to utilize a Jefferson-type "freedom of choice" plan based upon the requirements of *United States v. Jefferson County Board of Education,* 372 F.2d 836, 890-92 (5 Cir. 1966). The system has operated under that plan until the commencement of the 1970-1971 school year.

In July of 1969, pursuant to a Motion for Further Relief by the Plaintiffs-Respondents and the United States of America, which had intervened, an extensive hearing was held, following which the District Judge concluded that the "freedom of choice" plan then being utilized by the District did not achieve a sufficiently high degree of desegregation to be acceptable under the decisions of the Court of Appeals for the Fifth Circuit, and that the District should submit for his consideration a "complete zoning and/or pairing" plan by January 1, 1970. (See Appendix A)

Following that time, the school board, as it was then constituted, resubmitted a "freedom of choice" plan, and a zoning plan. In November of 1969 a District-wide referendum poll was taken, the results of which reflected overwhelming support for a "freedom of choice" plan. Only three (3) of the thirty-seven (37) predominantly black boxes voted against continuation under the "freedom of choice" plan. (See the District's submission of January 1, 1970.)

At the hearing of July 14-23, 1969, the Plaintiffs-Respondents submitted a pupil assignment plan with five (5) large zones to reach a result that no school hopefully, would have more than fifty per cent (50%) black

enrollment within the entire District. It was prepared by persons not familiar with the District, its transportation routes, or other administrative problems. It contemplated massive bussing and cross-bussing of students to achieve student racial balance. While Plaintiffs did not seek equal student racial balance at the time they presented their plan to the District Court because of the obviously prohibitive costs, when the matter was pending before the Court of Appeals they did suggest the adoption of a plan seeking equal student balance in each of the schools within the district. (See page 10 of Plaintiffs-Respondents Brief.)

The Government-Intervenor, after the hearing of July 14-23, 1969, offered a "partial plan" prepared by an expert witness from the Florida Desegregation Center, Dr. Michael Stolee. His plan was admittedly incomplete, and he was not further called as a witness by the Government during the hearings held in the Spring of 1970. However, following the hearing in July of 1969, the District Court suggested that the School District consult with the Texas Educational Desegregation Technical Assistance Center (TEDTAC), an agency connected with the University of Texas, but funded under Title IV of the Civil Rights Act of 1964, to assist the District in devising a zoning and/or pairing plan. (Appendix A) The co-operation of this agency left much to be desired, and subsequently, when the District learned that, rather than assisting, it was devising a plan to satisfy the Department of Health, Education and Welfare, it disavowed the adoption of any portion of the TEDTAC plan. (See the District's Submission of March 2, 1970)

Based upon two recent decisions of the Court of Appeals for the Fifth Circuit in Bibb County, Georgia, and Orlando, Florida, *Bivins v. Bibb County Board of Education,* ____ F.2d ____ (5 Cir. 1970); *Ellis v. Orange County School District,* 423 F.2d 203 (5 Cir. 1970) on March 2, 1970, the Houston Independent School District submitted two additional plans for the consideration of the trial Court. One of these was a "geographic capacity zoning plan" prepared in substantial accordance with the *Bivins* decision, and the other was an "equi-distant zoning" plan prepared pursuant to the holding in the *Orange County* case with appropriate modification to deal with special capacity problems in the Houston District.

After additional hearings held on April 6 and May 11, 1970, and the consideration of the entire record, the District Judge adopted an "equi-distant" plan for the Houston District, and rejected the "freedom of choice" plan also proposed, although recognizing that it had been "administered fairly and completely without discrimination by defendant District for several years." (See Appendix B). He also rejected the two other zoning plans of the District, primarily upon the grounds that if human discretion is involved in the drawing of school zones, it can always be demonstrated that a greater degree of desegregation can be accomplished by gerrymandering for that purpose irrespective of the educational and administrative disadvantages. (See Appendix B). The District Court then found as a fact that an equi-distant zoning plan, such as proposed by the board on March 2, 1970, was the best plan for the system from an educational and administrative standpoint. He refused to order the "pairing" of schools to accomplish further desegregation, *and there was no ex-*

pert proof before him regarding the administrative or educational advantages of pairing.[2]

Following his decision the Plaintiffs-Respondents and the government gave notice of appeal to the Court of Appeals. The Fifth Circuit ordered the adoption of the District's geographic zoning capacity plan of March 2, 1970 for secondary school levels, in that it accomplished a slightly higher degree of desegregation than did the equi-distant plan, and accepted the equi-distant plan at the elementary level, except that it ordered eleven (11) pairings and the rezoning of another predominantly black school with a predominantly white school. This entire action was taken

(1) without any supporting expert proof as to the feasibility or desirability of such pairings, and

(2) upon the Court's own initiative without any consideration being given to the framework of relief sought by any party to the cause.

The pairings were ordered notwithstanding the objections of Petitioner to any pairings, and particularly with respect to pairings of economically disadvantaged chidren. Because

---

2. The trial Court had expressed displeasure with the "pairing concept during the July 1969 hearing." He stated that it "did not make sense" to him to have the children congregate at the "nearest school" and then be transported to the assigned school (Tr. 829). He was not without expert support. Dr. Stolee, the Government's primary trial expert, stated he had encountered "varying degrees of unsuccess with pairing" (Tr. 919). Dr. Baines, a District witness, criticized "pairing" of children with different socio-economic backgrounds as being "educationally unsound" (Tr. 1050), and that under-achievers of all races will find ways to miss the bus (Tr. 1054). Drs. North and Kennedy pointed out the administrative difficulties with "pairing." (Dep. North. 17-18).

the order of the Court of Appeals was not based upon administrative or educational feasibility, considerable community disruption has resulted and full compliance with this aspect of the decision has still not been obtained.[3]

The Court ordered the pairing of the following elementary schools:

Atherton	pair with Eliot and Scroggins
Bruce	pair with Anson Jones
Burrus	pair with Roosevelt
Crawford	pair with Sherman
Dodson	pair with Lantrip
J.W. Jones	pair with Fannin
N.Q. Henderson	pair with Pugh
Pleasantville	pair with Port Houston
Ross	pair with Ryan and Looscan
Rhoads	pair with Frost
Sanderson	pair with Easter and/or Chatam

Of the fourteen (14) schools ordered to be paired with substantially all-black schools, seven (7) are predominantly composed of Spanish surnamed American students. These "pairings" result from the contiguity of the residential areas of Spanish surnamed Americans to substantially all-black residential areas. While it is of course a fact that Spanish surnamed Americans have not been causally zoned into these residential areas under a dual school system, such as is alleged by the Plaintiffs-Re-

3. It would appear that neither of Respondents would seek to uphold this portion of the decree of the Court of Appeals. Moreover, a number of Mexican-Americans have sought to intervene as a class to enjoin and prevent the proposed pairings.

spondents with respect to formerly all black schools, nonetheless, the pairing of the two groups has many educational ramifications and difficulties.

In the District Court, Petitioners opposed pairings not just for constitutional and adminstrative reasons, but because pairings of blacks and Spanish surnamed Americans is not always educationally sound. (See North and Kennedy Depositions, page 32) Moreover, while the intervenor, United States of America, adopted the TED-TAC proposal shortly before the decision of the District Court, and in which one hundred one (101) elementary schools were either paired or grouped, the eleven (11) pairings ordered by the Circuit Court did not correspond except in one particular with that claim for relief.

To further illustrate the patent error of the Court of Appeals in ordering these pairings on its own initiative, without supporting evidence or proof, the order even commanded the pairing of some predominantly black schools, with other predominantly black schools, thus accomplishing no additional desegregation. The only effect of what it did in that respect was to dilute the limited percentage of whites attending the schools that would be paired. For example, Ross Elementary was ninety-four per cent (94%) black, and Ryan is seventy-nine and five-tenths per cent (79.5%) black, and Looscan is one and four-tenth per cent (1.4) black. Also, Sanderson, Easter and Chatham, are all predominantly black schools. True, Chatham had more than ten per cent (10%) whites, but pairing it with two all-black schools will dilute all three schools to a level below the ten per cent (10%) integration factor sought by the Court of Appeals and the District Court.

In addition to the disruptive effect of these pairings ordered without supporting expert proof, but done solely to accomplish statistical integration, the bilingual program adopted by the District under Title VII is enervated by the pairings in Looscan, Sherman, and Anson Jones Elementary Schools.

Even if "pairing", with its attendant educational and disruptive effects, is once again affirmed as a viable tool to desegregate in the *Charlotte-Mecklenburg* (O.T. 1970, Nos. 281,349), and *Mobile*) (O.T. 1970, No. 436), cases, it should not be adapted without evidentiary support as to workability or feasibility, or that it would assist in establishing a unitary system.

REASONS FOR GRANTING THE WRIT

I.

The Court of Appeals erred in ordering pairing on its own initiative merely to accomplish statistical integration.

Indisputably, the Court of Appeals ordered the "pairing" of the various elementary schools enumerated without any proof, regarding the nature, extent, or effect of its actions, and solely upon its own initiative. Nor were the "pairings" within the reach of any of the prayers or motions for relief of any of the parties. Both Respondents have publicly disapproved the result of these "pairings." Not even elementary due process was accorded the parties. While school desegregation cases have become a breed apart, at least some semblance of the forms of action must remain.

On the "Equal Protection Clause" aspects of the case, Petitioners assert, as do the Districts in O.T. 1970, Nos. 281, 349, 436, that students cannot be assigned to non-neighborhood schools on a racial basis merely to overcome previously existing racial imbalances, and that, because of the distances involved, the "bussing" of students that will be required because of the "pairing" order is violative of the inhibitions imposed upon all courts under the Civil Rights Act of 1964. Because of the forcefulness of those presentations in these other causes, which were submitted on October 12 through 14, 1970, the energies of the Court will not be further claimed by a less exhaustive treatment of these questions at this time.

Nor does this District ask that the cause be *remanded* for the development of testimony concerning "pairing"; rather, the District requests an affirmance of the District Court's order as it applied to the elementary schools.

II.

"Pairing" without proof is not a permissible substitute for contrary fact determinations by the trial Court.

The only workable "plans" for student desegregation placed before either of the Courts below were those set forth in Petitioners' submission of March 2, 1970. All others, save the so-called TEDTAC "plan", were admittedly incomplete and/or not subject to implementation for the 1970-71 school year. Even the TEDTAC proposals, which the trial Court erroneously permitted the government to adopt as its "plan" on May 11, 1970, without any evidentiary hearing or supporting proof, was not

utilized by the Court of Appeals in ordering the "pairings".

Although the Court has treated this type of case in the nature of an equity-type proceeding, there is nothing to be found in any of its previous pronouncements authorizing the substitution of pure judicial polemics for fact-findings of a trial court, particularly where to do so flaunts sound educational goals. As the dissenting judge succinctly observed:

> "There is only one answer. It is rapidly becoming apparent that despite expressed disclaimers [*See* Singleton v. Jackson Municipal Separate School District, ____F.2d____, 5 Cir., 1970 (No. 29,226, August 12, 1970) (Footnote 5, slip opinion page 4)], the special school case panels of this Circuit are now out ahead of the requirements laid down by the Supreme Court and have adopted *sub silento* some unmentionable standard of numerical pupil racial balance to govern the affirmance or reversal of school case decisions. For the good of the schools and pupils of this Circuit, I for one do not understand why the magic figures must remain a mystery enshrouded in nebulous phrasing that says that the plan adopted is ineffective or unacceptable."

That some sanctity must attach to the work of the federal courts of original jurisdiction is self-evident; otherwise, nothing of substantial value can be contributed to the unraveling of this complex and oftimes emotional problem by the arm of the federal judiciary closest to it.

It was not until the August 12 decision in the *Singleton* case that the Fifth Circuit began to wholly initiate or originate "plans" without evidentiary support or based upon testimony adduced under the auspices of the district courts.

Prior to that time the Fifth Circuit shied away from such intercessions, No. 29,521, *Carr v. Montgomery County Board of Education,* ____F.2d____ (June 29, 1970); No. 29,425, *Carolyn Harvest v. Board of Instruction of Manatee County, Fla.,* ____F.2d____ (June 26, 1970); No. 28,572, *Donald Jerome Thomas v. West Baton Rouge Parish School Board, et al.,* ____F.2d____ (March 4, 1970); No. 29,769, *United States v. Board of Education of Webster County, Georgia,* ____F.2d____ (July 7, 1970), but apparently judicial impatience with the "progress" and "extent" of desegregation has wrought its toll.

This District respectfully urges that neither impatience, nor any other motive, supports the abandonment of the judicial process in the name of pure statistical integration of school systems!

It is noted with more than passing interest that counsel for the Plaintiffs-Respondents (being the same counsel for Petitioners in O.T. 1970, 281 and 349) respect the judicial process in this type of proceeding when it favors their cause. On page 46 of their Petition the following appears:

> *"There is nothing in this development of school desegregation law since Brown which warrants the departure from the traditional rule of appellate review announced by the plurality opinion of Judge Butzner for the court below* * * *."

Again, in the same Petition, opposing counsel states:

> "The district court's decision that the Finger Plan is feasible is in any event supported by substantial evidence. *It was error for the court of appeals to substitute its own finding of "unreasonableness" where*

> *there was no claim that the district court's findings were clearly erroneous.* Cf. *Northcross v. Board of Education,* 397 U.S. 232, 235 (1970)." (Emphasis added)

In sum, Petitioner urges the Court of Appeals erred in "substituting" its judgment for that of the Trial Court, particularly with respect to the "pairings" which are without any evidentiary support in the record.

III.

The "Equi-distant Plan" (or the alternatively presented "Geographic Capacity Plan") was the only complete plan and workable plan before the Court.

Petitioner is not attacking the order of the Court of Appeals adopting the geographic zoning capacity plan at the secondary school level, not only because of its greater administrative flexibility, but because it was ordered to implement the decision only six (6) days before the opening of the schools. Interterm transfers to comply with the adoption of an equi-distant plan for the entire District would now be additionally disruptive in this school system.

At the elementary level, because of the more limited geographic areas involved, a proximity plan, with appropriate majority-to-minority transfer provisions, offers one of the only potential plans to integrate a metropolitan school system.[4] This was recognized in the District Court,

---

4. Under present economic limitations facing urban school systems, it is doubtful whether any "plan" predicated upon *forced integration* will work for substantial periods of time, particularly in those districts — such as the Houston District — surrounded with numerous

but disregarded in the Court of Appeals purely to establish statistical integration.

"bedroom districts." Figure 2 graphically illustrates this truism. Except for the Northeast Houston and Crosby Districts, no other District in the County has as much as 20 per cent black student population. These recent figures can be supplied under a supplemental transcript if any question is raised concerning their verity. The Court will also note that the Galena Park and Crosby systems do not show an increase in student population. Not only does Galena Park have the next highest concentration of black student population, but it, like Houston and Crosby, is under integration order.

FIGURE 2

MEMBERSHIP COMPARISON OF
HARRIS COUNTY SCHOOL DISTRICTS
1969-70 — 1970-71

School Districts	1970-71	Spring 1969
Aldine	24,736	20,365
Alief	3,380	1,547
Channelview	3,547	3,249
Crosby	1,967	2,103
Cypress-Fairbanks	6,974	5,368
Deer Park	6,729	6,328
Galena Park	11,982	11,662
Goose Creek	14,270	12,976
Houston	241,154	245,396
Huffman	906	543
Humble	2,631	2,227
Katy	1,580	1,480
Klein	2,603	1,775
LaPorte	4,451	3,934
Northeast Houston	15,545	15,138
Pasadena	35,654	33,656
Sheldon	2,795	2,349
Spring	2,292	1,260
Spring Branch	39,774	35,734
Tomball	1,622	1,399

First Reporting Period
Research Department
November 10, 1970

Judge Clark, in his dissent, put the matter thusly:

> "Additionally, I would not reverse because the District Court relied upon valid precedent still viable in this Circuit, Ellis v. Board of Public Instruction of Orange County, Florida, 423 F.2d 203 (5 Cir., 1970). The District Court did not adopt the *Orange County* plan on the basis that it was some sort of talisman with universal therapeutic qualities for merging all school district student bodies. Rather, as the majority states, the trial court analyzed the general geographic and student and teacher racial compositions of the Orange County and Houston Districts and found them to be legally comparable. Yet, the majority opinion rejects the use of this plan for Houston while it in no way demonstrates an efficient legal distinction between the Houston and Orange County School Districts. Certainly the mere fact that *Orange County* denominated the requirement that a child attend the school closest to his home as a neighborhood school system and the District Court in the case *sub judice* labeled the same plan and equi-distant zoning plan, is not controlling. That is the difference between tweedledum and tweedledee, which is no difference at all. Why can *Orange County* still exist as the law of this Circuit applicable to that county, to Tuscaloosa and Anniston, Alabama [*See* Lee v. Macon County, ____F.2d____, 5 Cir., 1970 [No. 29,584, July 14, 1970]], and to Fulton County, Georgia, a suburb of Atlanta [*See* Hightower v. West, ____F.2d____, 5 Cir., 1970 [No. 29,933, July 14, 1970], but not in Houston, Texas? I assert it is not, as the majority suggests, because of the continued existence of all Negro or virtually all Negro schools. The opinion in *Orange County* expressly states that it left three schools projected to have all Negro student bodies and it intimated that other Negro students would be attending other

> virtually all Negro schools. In Fulton County, *Hightower* stated it intended to leave one school all Negro, one school 98% Negro and two other schools in excess of 87% Negro. *See also* Mannings v. Board of Public Instruction of Hillsborough County, Florida, ____F.2d____, 5 Cir., 1970 [No. 28,643, May 11, 1970]."

That the determination and the adoption of a "plan" as a viable and workable method of establishing a unitary system constitutes a "fact-finding" that should not be set aside in the absence of a showing of an abuse of discretion, or that the "plan" is totally unworkable, is again borne out by the arguments of counsel for the *Swann* group in O. T. 1970, No. 281. Discussing the equitable nature of these cases, counsel eloquently argued that:

> "The elementary plan ought to be upheld if the case is governed by the traditional rule for appellate review of a chancellor's decree in equity. The prevailing rule is that equitable discretion in framing remedies is necessarily broad and that a strong showing of abuse of discretion must be made to reverse such a decree. *United States v. W. T. Grant Co.*, 345 U.S. 629 (1953); *Continental Illinois Nat. Bank & Trust Co. v. Chicago R. I. & P. Co.*, 294 U.S. 648, 677 (1935); *United States v. Corrick*, 298 U.S. 435 (1936); *Rogers v. Hill*, 289 U.S. 582 (1933). In order to set aside the equity decree the appellant "must demonstrate that there was no reasonable basis for the district judge's decision," and thus that the remedy is so lacking in rationality as to amount to an abuse of discretion. *United States v. W. T. Grant Co., supra*, 345 U.S. at 634.
>
> "This Court's decisions in school cases have relied on traditional equitable principles on remedial issues.

> In the second *Brown* decision the Court invoked the tradition of equity which was said to be "characterized by a practical flexibility in shaping its remedies and by a facility for reconciling public and private needs" (349 U.S. at 300). The *Brown II* Court cited with approval a passage in *Alexander v. Hillman,* 296 U.S. 222, 239 (1935), stating.
>
> > Treating their established forms as flexible, courts of equity may suit proceedings and remedies to the circumstances of cases and formulate them appropriately to safeguard, conveniently to adjudge and properly to enforce substantial rights of all the parties before them." (pages 44-5)

It is quite accurate to say that these remarks were made by counsel in the context of seeking to uphold a "plan" favorable to their cause, but certainly counsel in the present cause (being the same as in *Swann*) would not have the temerity to urge a contrary rule in the present appeal.

The real and only reason for imposing the Court-initiated "pairings" upon this District was to accomplish a higher degree of statistical integration than was reachable under the "plan" adopted by the District Court. The dissent put it more strongly:

> "The true principle that underlies the reversal of the District Court here is that the neighborhood school system ordered for Houston did not achieve that degree of racial balance some of the Judges of this Circuit have declared is "enough" we do nothing but delude ourselves when we adopt such a premise. Like chasing the pot of gold at the end of the rainbow, this reasoning embarks us on a course without an end. Unless someone would be boldly foolish enough to assert that the Courts can deprive school

> district patrons of their freedom, then it follows as the night follows the day that the Courts will never finish litigating such "numbers games" cases."

This District should be permitted to try to resolve its difficulties under the "plan" adopted by the District Court, or the "geographic plan" alternatively urged by it in the Courts below. They are consistent with the "compact zones" concept of *Brown II*, and essentially preserve the "neighborhood school" concept. The patchwork "plan" of the Fifth Circuit — particularly the "pairings" — has and will do nothing towards obtaining the goal of a unitary system with the supposed educational advantages of an integrated system.

CONCLUSION AND PRAYER

The Court of Appeals ordered the pairing of schools in which large groups of economically disadvantaged persons would be interchanged purely for reasons of racial balance. As the dissenting Judge noted, and as the District proved in the Court below, this achieves nothing more than temporary statistical integration. Even more significantly, the potential pairings ordered without expert proof has brought, and will bring about substantial community disruption and interference with the effective operation of the school system.

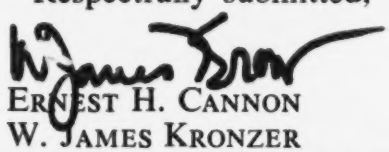
The equi-distant plan perhaps affords the most appropriate opportunity for school systems, such as Houston, to fully establish a unitary system, at least considered with the other elements of a unitary system as announced by this Court in the *Kent County* decision.

Wherefore, this District prays for the following relief:

(1) The pairings be eliminated, and the "equi-distant plan" of the District Court be adopted for the elementary level; or

(2) The Court alternatively adopt Petitioner's "geographic capacity" zone plan for the primary schools without "pairings".

Respectfully submitted,



ERNEST H. CANNON
W. JAMES KRONZER
500 Houston First Savings Bldg.
711 Fannin Street
Houston, Texas 77002

Special Counsel for Houston Independent School District in Desegregation Matters

CERTIFICATE

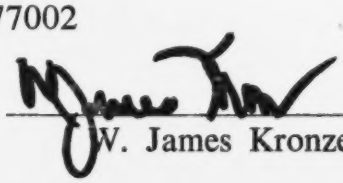
The undersigned certifies that on the 18 day of November, A.D. 1970, he did mail, by first class United States mail, three copies of the foregoing Petition and the Appendix of Opinions to counsel hereinbelow named, and that said counsel will be immediately notified of the date of docketing with the Clerk of Court.

Conrad K. Harper, Esquire
10 Columbus Circle
New York, New York 10019

Welden Berry, Esquire
711 Main Bldg.
Houston, Texas 77002

Bernard H. Shapiro, Esquire
Brian Landsbery, Esquire
Attorneys
Civil Rights Division,
U. S. Department of Justice,
Washington, D.C. 20530

Anthony Farris, Esquire
United States Attorney
515 Rusk Avenue
Houston, Texas 77002



W. James Kronzer

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 982

ROBERT Y. ECKELS, ET AL., PETITIONERS

v.

DELORES ROSS, ET AL., AND UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 66–89) is not yet reported. The decisions of the district court (Pet. App. 1–65) are also unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 25, 1970, and the mandate issued immediately. The petition for a writ of certiorari was filed on November 18, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

412-178—70——1

QUESTION PRESENTED

Whether, in the circumstances of this case, it was proper for the court of appeals to order certain modifications in the school desegregation plan approved by the district court.

STATEMENT

This is a school desegregation case involving the Houston, Texas, Independent School District. Recent proceedings commenced when the private plaintiffs, in July 1968, and the United States, plaintiff-intervenor, in February 1969, filed motions for supplemental relief based on this Court's decisions in *Green* v. *County School Board,* 391 U.S. 430; *Raney* v. *Board of Education,* 391 U.S. 443, and *Monroe* v. *Board of Commissioners,* 391 U.S. 450. Evidentiary hearings were held in July 1969 and April and May 1970; during the course of those proceedings several desegregation plans, described in the opinion of the court below (Pet. App. 70–78), were submitted to the district court. The petitioners proposed three alternative plans, a freedom-of-choice plan and two plans based solely on geographic zoning. Other alternatives were supported by the plaintiffs and the government.

The district court adopted one of the petitioners' geographic-zoning plans, and both the plaintiffs and the government appealed, urging the court of appeals to reverse and remand with directions to the district court to adopt other alternatives shown to be more effective. The Court of Appeals for the Fifth Circuit affirmed in part and reversed in part the district court's

decree. The district court was directed to adopt as to secondary schools the school board's alternative geographic-zoning plan and to require as to elementary schools that eleven specified school pairings and one zone-boundary change be superimposed on the plan approved by the district court.[1] The court of appeals also directed, however, that "alternatively the [district] court may adopt any other plan submitted by the school board or other interested parties, provided, of course, that such alternate plan achieves at least the same degree of desegregation as that reached by our modifications" [Pet. App. 82].

ARGUMENT

In our view this petition presents no issues warranting review by this Court and, accordingly, should be denied.

1. The plan approved by the court of appeals is basically a combination of proposals made by the school board, with the exception of the pairings directed by that court. Indeed, as the petitioners point out (Pet. 9), even the appellate court's modifications did not greatly enhance the effectiveness of those proposals in achieving desegregation. Nevertheless, both the petitioners and the district court categorically declined to adopt a range of techniques to promote desegregation, such as pairing, grouping, and con-

[1] The court of appeals denied a motion by the school board to stay the pairing order pending application in this Court for a writ of certiorari. The district court has not yet issued an order on remand.

solidating schools and altering school grade structures, which have been approved by this Court and the courts of appeals. See, *e.g., Green* v. *County School Board, supra* at 438 n. 6; *Swann* v. *Charlotte-Mecklenburg Board of Education,* 431 F. 2d 138 (C.A. 4); *Dowell* v. *Board of Education of Oklahoma City,* 438 F. 2d 865 (C.A. 10); *Singleton* v. *Jackson Municipal Separate School District,* No. 29, 226 (C.A. 5, Aug. 12, 1970). In these circumstances, and in view of ~~the one~~ court's invitation to the petitioners to submit equally effective alternative proposals, the Fifth Circuit's order directing implementation of school pairings clearly was not reversible error. See *Alexander* v. *Holmes County Board of Education,* 396 U.S. 19.

2. Issues presented by petitioners' miscellaneous arguments concerning the affirmative duty of school boards to be conscious of the racial consequences of their decisions are presently before this Court in *Swann* v. *Charlotte-Mecklenburg Board of Education,* Nos. 281 & 349, this Term, and *Davis* v. *Board of School Commissioners of Mobile County,* No. 436, this Term. Insofar as this Court's decision in those cases may affect the issues decided in this case, appropriate motions for supplemental relief or modification may be presented to the courts below.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.
JERRIS LEONARD,
Assistant Attorney General.
DAVID D. GREGORY,
JOSEPH D. RICH,
Attorneys.

DECEMBER 1970.

U.S. GOVERNMENT PRINTING OFFICE: 1970